

Form Based Codes in New Jersey

Issues & Opportunities

July 2010



Acknowledgements

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Regional Plan Association (RPA) is an independent regional planning organization that improves the quality of life and the economic competitiveness of the 31-county, New York-New Jersey-Connecticut region through research, planning, and advocacy. Since 1922, RPA has been shaping transportation systems, protecting open spaces, and promoting better community design for the region's continued growth. We anticipate the challenges the region will face in the years to come, and we mobilize the region's civic, business, and government sectors to take action.

RPA's current work is aimed largely at implementing the ideas put forth in the Third Regional Plan, with efforts focused in five project areas: community design, open space, transportation, workforce and the economy, and housing. For more information about Regional Plan Association, please visit our website, www.rpa.org.

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I. Preamble

This report was commissioned by the New Jersey Office of Smart Growth (OSG), under a *Smart Future* planning grant. The OSG grant identified the following scope for RPA's work:

- Describe form-based codes, their basis and objectives, potential advantages over traditional zoning and conditions for application in New Jersey.
- Consult with practitioners and other experts to clarify if, and under what conditions, form-based codes are currently authorized in New Jersey.
- Make recommendations for legislative changes to clarify statutory authority to implement form-based codes in New Jersey, if needed.
- Evaluate whether form-based codes are consistent with smart-growth, center-based planning principles.
- Monitor the experience of New Jersey towns that have pursued form-based codes.
- Provide a how-to guide of best practices and principles for municipalities considering form-based codes or hybrid zoning.

In this report, the terms “form-based zoning” and “form-based codes” will be used interchangeably.

The Office of Smart Growth grant to RPA was complemented by individual grants to several communities — Dennis, Hammon-ton, Metuchen, Newton, Plumsted, Ocean City and Upper — to help them develop form-based codes with their own consultants. Part of RPA's responsibilities is to report back on the experiences and outcomes of these municipal grants. We will do so to the extent possible, since some of these grants have not resulted in final products.

Other public funding has been allocated by the New Jersey Department of Transportation's *Mobility and Community Form* program, administered by the Municipal Land Use Center at the College of New Jersey, to assist a number of communities — Edison, Haddonfield, Mount Holly, Hammonton and Montclair — to develop their own form-based codes. The Delaware Valley Regional Planning Commission has also provided funding for these activities.

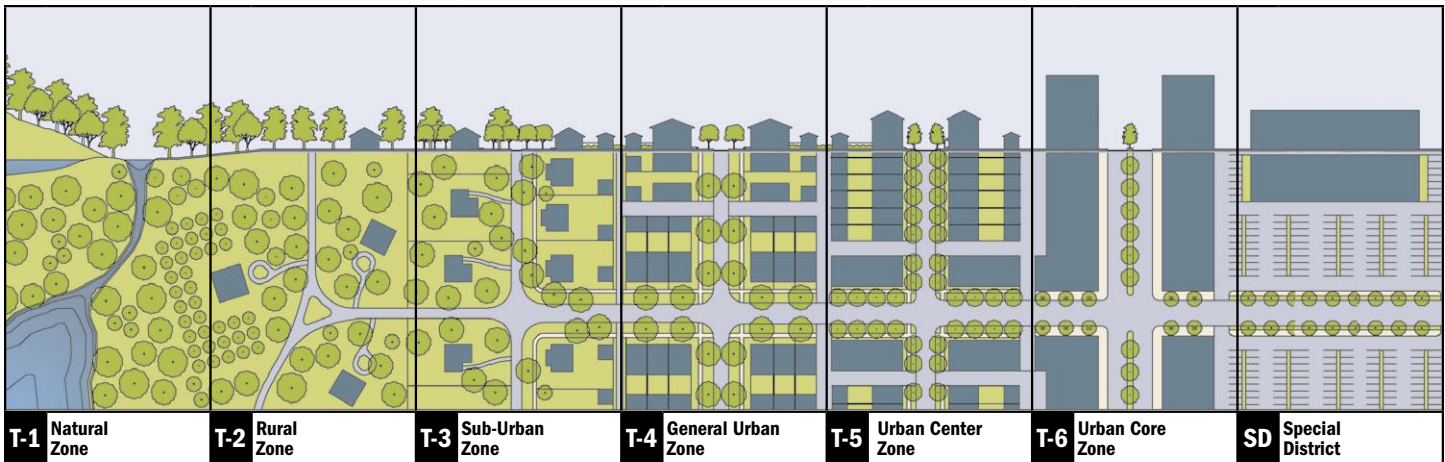
And a number of New Jersey planning practitioners have adopted the form-based code label for other zoning work they are engaged in.

The growing interest from the planning profession, coupled with an investment of public resources in a planning tool that is not widely used and still poorly understood in New Jersey suggests that it is important to try to clarify uncertainties that may exist:

- What is the experience to date with form-based codes in New Jersey?
- Under what circumstances should New Jersey communities seek to apply this relatively new (to the state), and still largely unproven tool?
- Is form-based zoning a case of “old wine in a new bottle”, ie simply a different way to label something we have always had available, or is it a genuinely new product, with new characteristics and posing new challenges?
- How different in form and substance is form-based zoning from more sophisticated, design-oriented manifestations of conventional zoning?

- How easy is it to nest form-based coding aspects within conventional zoning codes? What types of techniques for doing so are likely to work best?
- What can planners and municipalities reasonably expect to achieve with form-based codes that is not readily achievable under more conventional zoning?
- Will form-based codes assist the State and its municipalities achieve smart growth objectives not available, or not so readily achievable under conventional zoning?
- What process should New Jersey municipalities follow, and what steps should they take, prior to adopting a form-based code?
- Should the planning community seek legislative clarification of the authority to adopt form-based zoning by way of amendments to the Municipal Land Use Law?

These are the questions this report seeks to inform.



II. Introduction

Zoning codes — until recently a fairly staid and static area of planning activity — have seen a burst of innovation and renewed interest in recent years. A variety of new formats and conceptual frameworks for organizing zoning codes and the areas they regulate have been proposed, refined and have rapidly gained widespread acceptance, in large measure as a result of broad dissatisfaction with conventional zoning codes and the perception that these favored sprawl development and impeded smart growth and new urbanist communities. The reality is more nuanced and complex than this black and white description, but the growing awareness among planners and designers that most adopted zoning codes discriminated against older, traditional communities and made it very difficult, and often impossible to build new communities based on traditional planning and design principles has certainly been responsible for the surge in interest in new zoning alternatives. Another widespread source of dissatisfaction with many conventional zoning codes had to do with their extreme complexity, which made them difficult to interpret and administer by all but a few professionals, as well as very costly to satisfy.

Reactions to these conditions have spawned a number of alternatives. Three new approaches have been particularly influential and have captured the interest of the planning profession: the SmartCode, the Transect and Form Based Codes. While this report will focus more narrowly on form-based codes per se, it is important to briefly discuss the two other approaches, as they are not mutually exclusive and indeed are often used jointly.

The Transect

The Transect is a deceptively simple but conceptually powerful approach developed by Andres Duany to codify the continuum between wilderness, at one extreme and urbanity, at the other. The Transect divides this continuum into six transect zones:

- **T-1 – Natural:** preserved land and natural features.
- **T-2 – Rural:** preserved land and natural features, agriculture and forestry, very low density or clustered residential and limited retail, office, civic and other uses.
- **T-3 – Suburban:** clustered residential at various densities with limited retail, office, civic and other uses.
- **T-4 – General Urban:** medium to high density residential, retail, office, civic and other uses.

- **T-5 – Urban Center:** high density residential, retail, office, civic and other uses.
- **T-6 – Urban Core:** maximum intensity residential, retail, office, civic, entertainment and other uses.

The Transect also contemplates special districts, or areas with more specialized uses, such as an airport, hospital complex or university campus.

The Transect is not a zoning framework per se, but rather a conceptual framework for achieving internal consistency not just of uses but also and primarily of building types, building heights, street types, streetscape treatments and so forth within each transect area. The core idea is that those natural elements that define the Natural Zone (T1) would be inappropriate in the Urban Core (T6), and similarly, those largely built elements that characterize the Urban Core would be out of place in the Natural Zone.

The Transect seeks to prevent the types of chaotic land use conditions — created by poorly conceived conventional, single-use zoning, or in some cases, no zoning at all — frequently found in edge cities and other manifestations of sprawl, where high rise office towers or regional retail outlets might abut single-family neighborhoods designed to suggest a bucolic rural setting, and where isolated pockets of high density residential enclaves can be found, disconnected from the rest of the community.

While the sense of order and internal consistency conveyed by the Transect is intuitively appealing and soothing, applying the Transect to the fractured and complex landscapes of our post-industrial metropolitan areas can be a very frustrating and perhaps ultimately pointless exercise. It is also questionable whether the degree of internal consistency required by the Transect is advantageous or even necessary to achieve smart growth objectives, or whether it simply manifests aesthetic or ideological preferences rooted in idealized historical models.

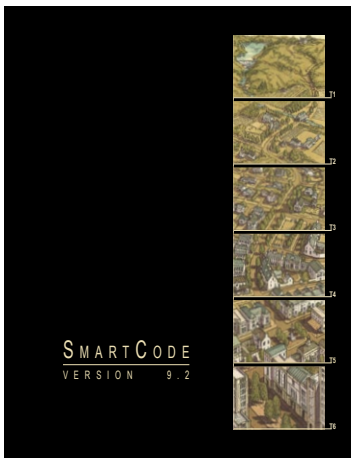
While New Jersey planners are clearly not unaware of the Transect, we are not aware of any New Jersey municipality with an adopted Transect-based zoning ordinance, or contemplating such a move. In a few cases a proposed application of the Transect has been developed for illustrative purposes, such as in the Town of Newton and in Collingswood, but it does not appear either code has been rewritten to reflect the Transect. The transect has reportedly also been used in a few places for planning purposes, for example in Newton's municipal master plan and in the Rural Development Plan for Route 130 in Burlington County. And the recently adopted redevelopment plan and form-based code for downtown Woodbury references the Transect and defines three zoning districts — downtown, live-work and neighborhood — but these do not correspond to the Transect zones as described above.

The SmartCode

The SmartCode is a very ambitious, trademarked form-based approach to zoning and land development regulations developed by Andres Duany and others. It seeks to simplify and clarify the often opaque organization found in conventional codes and replace it with a more intuitive and user-friendly format. It is applicable at all scales, from the scale of the regional plan to the infill community plan to building scale plans. It is also a repository of planning and design principles, including specific standards. The SmartCode is organized in seven Articles: 1 — general to all plans; 2 — regional scale plans; 3 — new community scale plans; 4 — infill community scale plans; 5 — building scale plans; 6 — standards and tables; and 7 — definitions of terms.

In addition, there is a rapidly growing number of SmartCode modules, or “plug-ins” which seek to address specific areas of concern, such as lighting standards, sound standards, urban agriculture and affordable housing incentives. Only those modules which are relevant to a particular geographic application of the SmartCode are meant to be adopted.

Cover of SmartCode v.9



Duany refers to the SmartCode as the “operating system” of the new urbanism, ie the central framework which provides coherence and gives meaning to all the constituent parts. It explicitly incorporates the planning and design principles of the new urbanism and as such internalizes its values. This is a fundamental difference from most conventional zoning codes, which tend to display a more neutral posture with respect to the desired form or development outcome, although a close examination of the implications of the planning and design standards contained therein suggests that, in many cases, the planning and design outcomes of development negate new urbanist and smart growth forms.

The SmartCode is also keyed to the Transect, such that each form-based provision is referred to one or more Transect zones.

The SmartCode provides sample standards and metrics — for example parking standards, building heights, building configuration, landscaping and signage — considered generally appropriate to each Transect zone. These standards are generic, although culled from the technical literature and grounded in the empirical analysis of traditional communities. The authors strongly recommend that in each local application of the SmartCode these standards be “calibrated” to reflect (a) local precedents and preferences, (b) unique local conditions, and (c) relevant supra-municipal (ie State and Federal) regulations. For example, in New Jersey the provisions of the SmartCode would have to be calibrated to reflect the state’s myriad regulatory programs, such as the Coastal Area Facilities

Review Act (CAFRA) and the Residential Site Improvement Standards (RSIS) both of which regulate parking standards, among many other things. Local applications of the SmartCode would also have to be calibrated to reflect New Jersey’s growth management framework — the State Plan — as well as other regulatory programs with growth management implications, such as the Water Quality Management Plans.

We are not aware of any applications of the SmartCode by New Jersey municipalities.

National Incidence

There is no authoritative and comprehensive source of information on the extent to which these new approaches to zoning have replaced conventional codes. Anecdotal evidence suggests a rapidly growing interest. There are many known cases where cities have adopted one or more of these new codes to replace existing zoning for certain areas — often a downtown, a commercial corridor or specific neighborhoods or districts. In many other cases these codes are applied as “overlays” or “floating zones”. There are also a number of large cities — Miami and Denver among them — that have adopted citywide form-based codes. The state of Maine is reportedly considering adopting a statewide form-based code. Other states, such as Michigan, have actively promoted form-based codes, by educating planners and municipal officials through courses offered by the Form-Based Code Institute.

“Form based codes reach critical mass”, an article by Phillip Langdon in the April-May 2010 edition of New Urban News, reports that 294 form-based codes have been adopted or are being prepared or proposed in 40 States in the US and three Canadian provinces. Since 2007, the Richard H. Driehaus Charitable Lead Trust and the Board of Directors of the Form-Based Codes Institute (FBCI) have recognized the state-of-the-art in writing and implementation of form-based codes with an annual achievement awards program.

TABLE 1. TRANSECT ZONE DESCRIPTIONS

SMARTCODE

Municipality

TABLE 1: Transect Zone Descriptions. This table provides descriptions of the character of each T-zone.

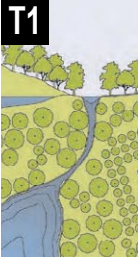


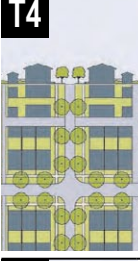
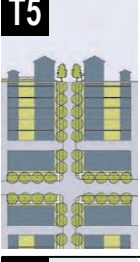
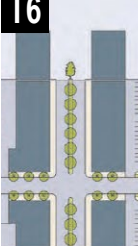
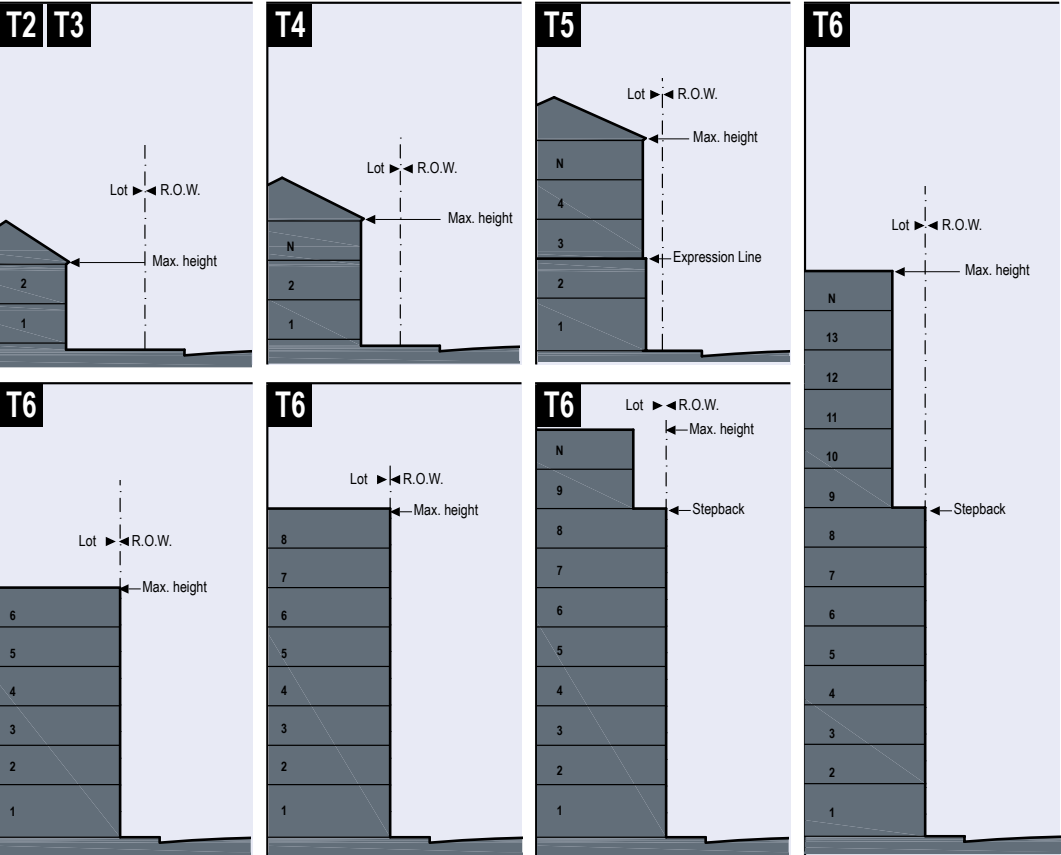
	<p>T-1 NATURAL T-1 Natural Zone consists of lands approximating or reverting to a wilderness condition, including lands unsuitable for settlement due to topography, hydrology or vegetation.</p>	<p>General Character: Natural landscape with some agricultural use Building Placement: Not applicable Frontage Types: Not applicable Typical Building Height: Not applicable Type of Civic Space: Parks, Greenways</p>
	<p>T-2 RURAL T-2 Rural Zone consists of sparsely settled lands in open or cultivated states. These include woodland, agricultural land, grassland, and irrigable desert. Typical buildings are farmhouses, agricultural buildings, cabins, and villas.</p>	<p>General Character: Primarily agricultural with woodland & wetland and scattered buildings Building Placement: Variable Setbacks Frontage Types: Not applicable Typical Building Height: 1- to 2-Story Type of Civic Space: Parks, Greenways</p>
	<p>T-3 SUB-URBAN T-3 Sub-Urban Zone consists of low density residential areas, adjacent to higher zones that some mixed use. Home occupations and outbuildings are allowed. Planting is naturalistic and setbacks are relatively deep. Blocks may be large and the roads irregular to accommodate natural conditions.</p>	<p>General Character: Lawns, and landscaped yards surrounding detached single-family houses; pedestrians occasionally Building Placement: Large and variable front and side yard Setbacks Frontage Types: Porches, fences, naturalistic tree planting Typical Building Height: 1- to 2-Story with some 3-Story Type of Civic Space: Parks, Greenways</p>
	<p>T-4 GENERAL URBAN T-4 General Urban Zone consists of a mixed use but primarily residential urban fabric. It may have a wide range of building types: single, sideyard, and rowhouses. Setbacks and landscaping are variable. Streets with curbs and sidewalks define medium-sized blocks.</p>	<p>General Character: Mix of Houses, Townhouses & small Apartment buildings, with scattered Commercial activity; balance between landscape and buildings; presence of pedestrians Building Placement: Shallow to medium front and side yard Setbacks Frontage Types: Porches, fences, Dooryards Typical Building Height: 2- to 3-Story with a few taller Mixed Use buildings Type of Civic Space: Squares, Greens</p>
	<p>T-5 URBAN CENTER T-5 Urban Center Zone consists of higher density mixed use building that accommodate retail, offices, rowhouses and apartments. It has a tight network of streets, with wide sidewalks, steady street tree planting and buildings set close to the sidewalks.</p>	<p>General Character: Shops mixed with Townhouses, larger Apartment houses, Offices, workplace, and Civic buildings; predominantly attached buildings; trees within the public right-of-way; substantial pedestrian activity Building Placement: Shallow Setbacks or none; buildings oriented to street defining a street wall Frontage Types: Stoops, Shopfronts, Galleries Typical Building Height: 3- to 5-Story with some variation Type of Civic Space: Parks, Plazas and Squares, median landscaping</p>
	<p>T-6 URBAN CORE T-6 Urban Core Zone consists of the highest density and height, with the greatest variety of uses, and civic buildings of regional importance. It may have larger blocks; streets have steady street tree planting and buildings are set close to wide sidewalks. Typically only large towns and cities have an Urban Core Zone.</p>	<p>General Character: Medium to high-Density Mixed Use buildings, entertainment, Civic and cultural uses. Attached buildings forming a continuous street wall; trees within the public right-of-way; highest pedestrian and transit activity Building Placement: Shallow Setbacks or none; buildings oriented to street, defining a street wall Frontage Types: Stoops, Dooryards, Forecourts, Shopfronts, Galleries, and Arcades Typical Building Height: 4-plus Story with a few shorter buildings Type of Civic Space: Parks, Plazas and Squares; median landscaping</p>

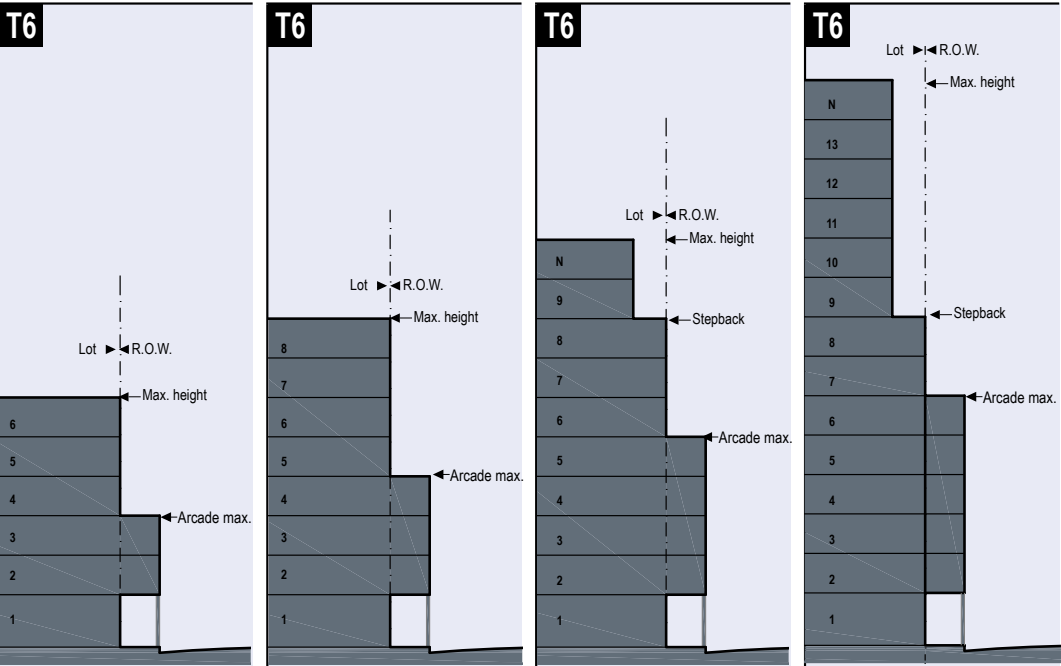
TABLE 8. BUILDING CONFIGURATION

SMARTCODE
Municipality

TABLE 8: Building Configuration. This table shows the Configurations for different building heights for each Transect Zone. It must be modified to show actual calibrated heights for local conditions. Recess Lines and Expression Lines shall occur on higher buildings as shown. N = maximum height as specified in Table 14k.



Stepbacks/Arcade Heights. The diagrams below show Arcade Frontages. Diagrams above apply to all other Frontages.



SC40

SMARTCODE VERSION 9.2

III. Differences Between Conventional Zoning and Form Based Zoning

According to the Form Based Codes Institute, a form-based code is a “method of regulating development to achieve a specific form and a desired physical outcome”. The emphasis on form — not use — suggests a regulatory tool with a different focus from conventional zoning. But how different? Is it a question of form or structure? Is it a question of content? Is it a question of presentation style? Is it a question of intent?

At first glance, there appear to be profound differences between conventional zoning and form-based codes. But neither conventional zoning, nor form-based codes are all cut from the same cloth. There is considerable variation between and among conventional codes, as well as between and among form-based codes. So what exactly are the fundamental differences between the two types of codes?

A critical first step for planners and communities considering a form-based code approach as a possible regulatory tool is to understand exactly how form-based zoning and conventional zoning may differ in both their intent and organization, as well as how the two systems may lead to potentially different outcomes. This is not a simple task, because both conventional zoning and form-based zoning can take a variety of forms and flavors. We will try to focus on the fundamentals in order to clarify the most relevant distinctions. In order to do this, it is perhaps useful to begin with a discussion of conventional zoning and its tools.

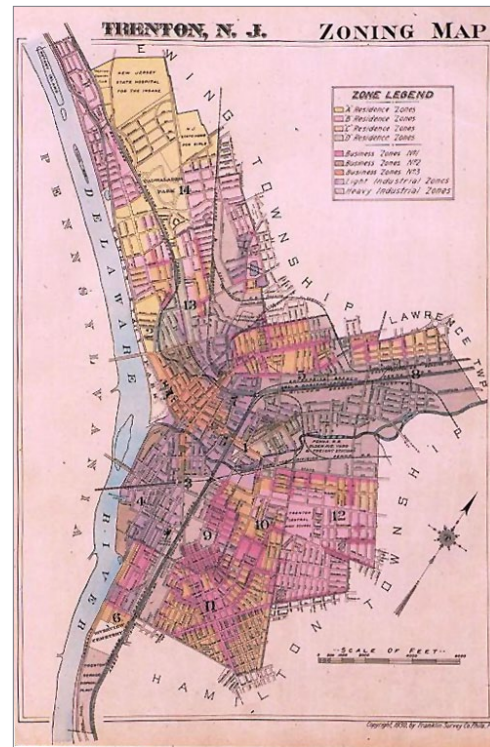
Conventional Zoning

Conventional zoning has traditionally relied on land uses to define and characterize zoning districts. Zoning — which was first applied in Frankfurt, Germany in 1891 (Anthony Sutcliffe: *Towards the Planned City*) — was devised precisely to regulate the proximity and relationships between different land uses, with a view towards protecting certain uses — usually residential — from the negative environmental impacts and deleterious influence on property values caused by proximity or exposure to less benign uses, such as industrial, and their externalities.

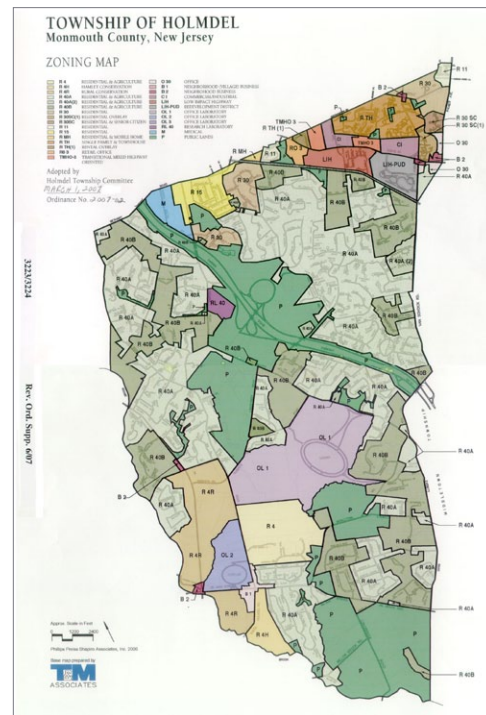
Over time, conventional zoning became extremely — many would say overly — concerned with regulating very fine and detailed distinctions, often between similar uses, such that it is not uncommon for suburban municipalities to have separate zoning districts for single-family homes with seemingly similar lot sizes: 8,000 sq ft, 10,000 sq ft, 15,000 sq ft, 22,500 sq ft, and so forth.

As an example, Trenton’s original 1930 zoning map used only 8 zoning districts to regulate a diverse, richly textured urban environment. In contrast, suburban Holmdel Township’s 2007 zoning map requires 28 zoning designations to regulate a functionally much simpler set of land use conditions.

City of Trenton: 1930 Zoning Map



Holmdel: 2007 Zoning Map



Such an obsessive and rigid regulatory framework, when imposed on a physical and social landscape that does not conform easily to the idealized geometries, has resulted in sterile, “cookie cutter” neighborhoods that respond poorly to an area’s physical features and are equally poorly equipped to adapt to the challenges of economic and demographic diversity.

In conventional zoning, each zoning district is defined by the prescribed permitted uses. Uses not permitted are sometimes explicitly named; alternatively, all uses not explicitly permitted are usually considered prohibited. Conventional zoning also frequent-

ly allows for conditional uses in certain district; these are treated as permitted, provided they meet the specified conditions; and prohibited, if they do not.

In addition to regulating uses, conventional zoning also defines a series of quantitative relationships for the permitted uses and the building types they are expected to occupy. Commonly referred to as “bulk standards”, these relationships are usually expressed as minimums or maximums, such as the minimum front yard setback or the maximum floor area ratio. While frequently presented in narrative form, they are also frequently presented in tabular form.

Conventional zoning districts are usually, but not always defined as homogeneous areas, often dedicated to a single use, ie single-family housing on lots with a defined minimum lot area, office buildings and so forth. This is both a result of the historic bias towards single-use zoning — ever more precise in its distinctions between different uses or even variations of building type within a single use category — but also as a response to the legal threat of “spot-zoning”, whereby a particular property is designated for a particular use or a particular set of conditions, challenging the “uniformity” requirement within each zoning district, ie that all properties should be treated equally. This is a key, and very complex area of zoning which deserves further discussion.

Conventional zoning districts can, and frequently do, allow multiple uses: single-family and two-family residential, for example, or retail and residential, or even more uses. Theoretically, there is no limit to the number of uses which can be permitted, or conditionally permitted within a district, although clearly if all uses are permitted a fundamental purpose of zoning — to separate uses — is negated.

Conventional zoning can use a narrative, which may or may not be supplemented by a map, to describe where the different permitted uses are contemplated spatially within a single zoning district. For example, a mixed-use district may restrict retail or service uses to locations with frontage on a certain street or streets, and require residential and office uses in upper levels; while on other streets in the same district it may be permissible to have buildings which are entirely dedicated to residential or office uses.

So, under conventional zoning, it is possible to anchor building-type specific regulations to specific existing streets or rights-of-way — ie along XYZ Street, only apartment buildings or townhouses are permitted, and only retail and/or personal or professional service uses may front along ABC Street. Clearly, for this to work, the zoning districts in question would have to be set up to allow for the variety of uses permitted, as well as specify the exact circumstances under which each use is permitted or conditionally permitted. This may result in a complicated and cumbersome framework, but technically it is achievable. It would appear that the reason conventional zoning codes have not generally taken this approach is not because they were somehow precluded from doing so, but rather because the code writers sought to avoid doing so. In other words, conventional zoning code writers chose not to authorize those types of outcomes, where multiple building types and multiple uses might co-exist within districts.

In summary, in its more sophisticated manifestations it would appear that conventional zoning can approximate many of the attributes of form-based zoning.

To be fair, there is frequently confusion in conventional zoning codes between uses and building types. For example, conventional codes typically refer to single-family housing or townhouses — which are both building types — as permitted uses. But both single-family houses and townhouses, to continue with this example, can be occupied with other uses. They can be turned into offices, retail establishments, restaurants, day care centers or any number of other uses or combination of uses. The building type does not change, but the use may, to the extent that building codes

and health and other regulations would allow it. This is a common condition in older downtowns and neighborhoods, where the same building may be occupied by a variety of uses over time, with minimal modifications to the building itself.

Ultimately, it would appear that one of the greatest limitations of conventional zoning lies in this gray area between building type and building use. When a code prescribes uses, it captures those situations where use and building type are perfectly aligned, ie single-family housing and a single-family residential occupancy. If there is a desire to change the use, it will trigger a use variance, unless the proposed new use is also permitted. Zoning district designations based primarily on building types — independently from permitted uses — would appear to be a stretch under conventional zoning.

Form Based Zoning

Form based zoning, on the other hand, prescribes permitted building types first, then defines permitted uses. This difference in emphasis between “use-based” zoning and “form-based” zoning reflects different priorities. Use-based zoning is focused on separating uses and assigning different uses to different areas; form-based zoning, while still regulating uses, is more focused on regulating community form, ie the shape of the built outcome. And this is accomplished by regulating building types and their relationships to streets and other public spaces.

According to the Form Based Code Institute “Form-based codes foster predictable built results and a high-quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code. These codes are adopted as regulations, not mere guidelines. Form-based codes address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks. The regulations and standards in form-based codes, presented in both diagrams and words, are keyed to a *regulating plan* that designates the appropriate form and scale (and therefore, character) of development rather than only distinctions in land-use types. This is in contrast to conventional zoning’s focus on the micromanagement and segregation of land uses, and the control of development intensity through abstract and uncoordinated parameters (e.g., Floor Area Ratios, dwellings per acre, setbacks, parking ratios, traffic Level of Service) to the neglect of an integrated built form. Not to be confused with design guidelines or general statements of policy, form-based codes are regulatory, not advisory.”

While there is considerable variation in the universe of form-based codes, they are likely to include a regulating plan, a two-dimensional representation of the code indicating the location and desired character of streets and public spaces, block configurations and permitted building types and locations; standards for the design of public spaces, including parks, plazas and public rights-of-way, parking and streetscapes; and building type standards, regulating the permissible building types, their relationship to the street and other public rights-of-way and the uses they may house. Other sections found in form-based codes, such as a section containing definitions and a section regarding code administration are commonly part of conventional zoning codes.

Central Hercules Regulating Plan



This illustration depicts a district of streets and buildings suited to serve a fine-grained mix of uses. The City expects a mix of allowed uses to occur in all neighborhoods and blocks. The City will require a mix of uses within buildings along Main Street and the Four-Lane Avenue. The City will not require particular uses nor a particular distribution of uses, but will require the integration of residential and commercial uses. Uses allowed by right or by permit or that are prohibited are listed in Chapter V of this Code.

The City will require a variety of architectural styles along all street types. However, along Main Street and the Four-Lane Avenue, proposals for colonnades will be scrutinized to ensure adequate sight distance for automobile drivers.

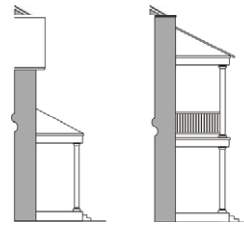
Form-based codes may also include standards governing architectural design, landscaping and signage, along with engineering and environmental standards. Again, all of these are permissible and frequently found in most conventional New Jersey zoning codes, with the exception of the architectural standards, which are less common due to apprehensions as to their legality.

Form-based codes are expressed in a variety of graphic documents intended to help the reader visualize the desired outcome, such as illustrative isometric, axonometric or bird's eye views of the desired end product. These graphics help the general public and all interested stakeholders clearly understand the planning and design intentions behind the codes.

As a result of this emphasis on a detailed graphic presentation, form-based codes can be much more predictable than conventional codes and allow anyone to anticipate with a reasonable level of confidence the "look and feel" of the desired public and private realms and the overall community character which they create. They can represent a significantly enhanced level of public control over future development and redevelopment. And the enhanced level of predictability is key to achieving support from the development industry, landowners and the general public. Form-based code advocates also claim that where they have been used, form-based codes have shown a higher potential to empower communities, improve the quality of the built environment, prevent inappropriate suburban building types in urban or in-town locations and better fit infill or redevelopment projects within the surrounding

Central Hercules Code: Porches

A. Awnings & Marquees

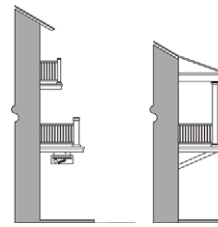


Depth = 5 ft. minimum
Height = 10 ft. minimum clear
Length = 25%-100% of building front



- The above requirements apply to first-floor awnings. There are no minimum requirements for awnings above the first floor.
- Marquees and awnings shall occur forward of the build-to line and may encroach within the right-of-way, but shall not extend past the curb line.
- Awnings shall be made of fabric. High-gloss or plasticized fabrics are prohibited.

B. Balconies



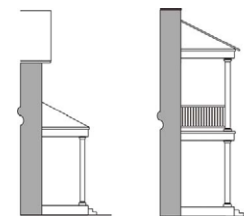
Depth = 6 ft. minimum for second-floor balconies
Height = 10 ft. minimum clear
Length = 25%-100% of building front



- Balconies shall occur forward of the build-to line and may encroach within the right-of-way, but shall not extend past the curb line.
- Balconies may have roofs, but must be open, un-air-conditioned parts of the buildings.
- On corners, balconies may wrap around the side of the building facing the side street.

Central Hercules Code: Porches

C. Front Porches

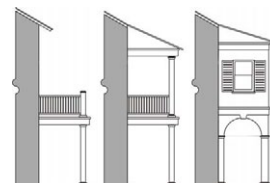


Depth = 8 ft. minimum
Length = 25%-90% of building front



- Front porches may have multi-story verandas and/or balconies above.
- Front porches shall be forward of the build-to line but shall not extend into the right-of-way.
- Front porches must be open, un-air-conditioned parts of the buildings. No more than 75% of the floor area of a porch shall be screened if the porch extends forward of the build-to line.

D. Colonnades/Arcades



Depth = 8 ft. minimum from the build-to line to the inside column face
Height = 10 ft. minimum clear
Length = 75%-100% of building front



- Columns shall be a maximum of 6-in. wide in front of shop-front windows.
- Open multi-story verandas, awnings, balconies, and enclosed useable space shall be permitted above the colonnade.
- Colonnades shall only be constructed where the minimum depth can be obtained. Colonnades shall occur forward of the build-to line and may encroach within the right-of-way, but shall not extend past the curb line.
- On corners, colonnades may wrap around the side of the building facing the side street.
- Colonnades and arcades are not permitted on the four-lane avenue.

Central Hercules Code — Use Matrix

Form based codes continue to regulate uses, however uses may be linked to building types instead of zoning districts.

WF ^(4, 6)	CQ	HT ⁽³⁾	CC/HC ⁽⁴⁾	TYPE OF USES
				Public/Civic Uses
C	A	A	C	Churches
A	A	A	A	City Hall
A	A	A	A	Convention center
A	A	A	A	Day care facilities ⁽¹⁾
C	A	C	C	Hospitals
A	A	A	A	Information kiosks
A	A	A	A	Parks, recreation areas, local and regional trails
A	A	A	A	Parking garages
A	A	A	A	Post Office
A	A	A	A	Public Safety (police dispatch, fire substations)
C	C	C	C	Public restroom
C	C	C	C	Private schools, religious, K–12
A	A	A	A	Public school ⁽²⁾
A	A	A	A	Public transportation (bus, train, inter-city rail)
A	A	A	A	Public utilities and service structures
A	A	C	A	Recreation centers
				Office/Professional Uses
A	A	A	C	Advertising Agencies
A	A	A	C	Employment Agencies
A	A	A	C	Home Occupations
				Professional Offices
A	A	A	C	Architects, Certified Public Accountants, Lawyers, Medical and Dental Offices of less than 5000 square feet. If less than 2000 square feet, no off-street parking is required.
C	C	C	C	Architects, Certified Public Accountants, Lawyers, Medical and Dental Offices of more than 5,000 square feet.
C	C	C	P	Veterinary Clinics of less than 2,000 square feet. Board and care facilities for domesticated animals must be associated with a veterinary clinic.
P	C	P	P	Veterinary Clinics of less than 2,000 square feet. Board and care facilities for domesticated animals must be associated with a veterinary clinic.
				Commercial/Service/Retail Uses
C	C	C	C	Alcohol beverage sales establishments (stand-alone or within a hotel, restaurant, or grocery store)
C	A	A	A	Adult congregate care facility/nursing home
P	C	P	P	Adult novelty/Entertainment

WF = Waterfront
CQ = Central Quarter
HT = Hilltown
CC/HC = Civic Center/Hospitality Corridor

A = Allowed
C = Conditional
P = Prohibited

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July 16, 2001

physical context. This seems intuitively reasonable, but it is not readily verifiable.

Planners involved with form-based codes tend to spend a considerable amount of time and resources “coding” the existing conditions and their desired preservation or transformation, that is to say measuring the spatial relationships between buildings, rights-of-way and public spaces as well as other conditions which contribute to the place-making experience, such as streetscape treatments. This level of investment in documenting existing conditions to be maintained or enhanced, as well as conditions to be changed has the potential to make form-based codes a much better fit with the actual physical conditions on the ground, as opposed to many conventional codes, which exhibit thoroughly exasperating disconnects with the particulars of the existing conditions they are intended to regulate.

[Graphic — Building Type Documentation Sheet (from Parolek)]

[Graphic — Frontage Type Documentation Sheet (from Parolek)]

[Caption: Planners involved with form-based codes tend to spend a considerable amount of time and resources “coding” the existing conditions.]

While many conventional codes are clunky, sprawling documents that are difficult to read even to trained professionals, and where relevant provisions are often found lurking in counter-

intuitive locations, placed seemingly at random, most form-based codes place a premium on brevity, simplicity and transparency, clearly favoring slim, elegant and easy-to-read ways of displaying information. Formats combining sparse narrative, diagrams, tabular displays and graphics condense the fundamental code provisions into less space. One might even say that in terms of presentation, form-based codes are to conventional codes as compact development is to sprawl. But part of the explanation for this lies in the fact that conventional codes have often been around for decades, and have suffered through numerous rounds of amendments and modifications, inflicted by many hands. Over time, they have become multi-layered and increasingly complex. Rarely do we see an appropriately funded effort to re-codify an existing code from top to bottom. On the other hand, form-based codes — a recent phenomenon — arrive bright and shiny off the assembly line and cut from whole cloth. It will take some time to see if they age gracefully and how easily they are capable of accepting changes.

In summary, form-based code advocates blame conventional codes for mandating sprawl, and offer the form-based codes as a smart growth, new urbanist response. This is disingenuous, and confuses form with content and intent. There is no denying that conventional zoning codes have resulted in sprawl, but then again that was the land use pattern they were designed to facilitate. The codes delivered the product they were designed for. They could have been designed to deliver a different product. It may be easier to create new urbanist communities with form-based codes, and they may be more predictable and perhaps easier to administer, (although this last point is debatable, and there are some who accuse form-based codes of being overly complex and difficult to administer)) but it is not impossible to do so under conventional zoning.

Historic Precedents

It should be mentioned that while the concept of form-based zoning and the widespread use of the term in the planning literature is relatively recent, the intent behind this tool and the associated desire to improve the quality of the built environment can be traced back to a number of illustrious precedents from the history of city-building. The history of planning and urban design documents a number of efforts undertaken over the centuries which sought to achieve the level of control over physical form that current proponents of form-based zoning seek to make widely available. The high regard in which the built outcomes of these earlier efforts have been held by generations of both planners and the general public helped inspire the current interest in more precise tools for regulating form and consequently an entire new generation of codes focused on the physical outcomes.

Two examples come to mind: the plan and code developed to guide the reconstruction of downtown Lisbon after the devastation caused by the 1755 earthquake and tsunami, and the plan and code created for the redevelopment of central Paris in the 1870s under the leadership of Baron Haussman plan and Napoleon III. To be clear neither of these episodes constitute equivalents to what we would call a form-based code today. They were very different in many respects, both formally and in terms of content.

The Lisbon plan took the form of a comprehensive site plan and associated building elevations. It was a clear and precise blueprint for the transformation of a devastated medieval urban fabric of narrow, winding streets into a shining example of rationalist urban planning with a clear block structure and a hierarchy of streets. The behind-the-scenes negotiations with affected property owners — which included powerful Church interests and many leading members of the Portuguese aristocracy — and the mecha-

nisms for redistribution of building rights were reportedly very complicated and fraught with political risks. Those aspects are not captured in the plan.

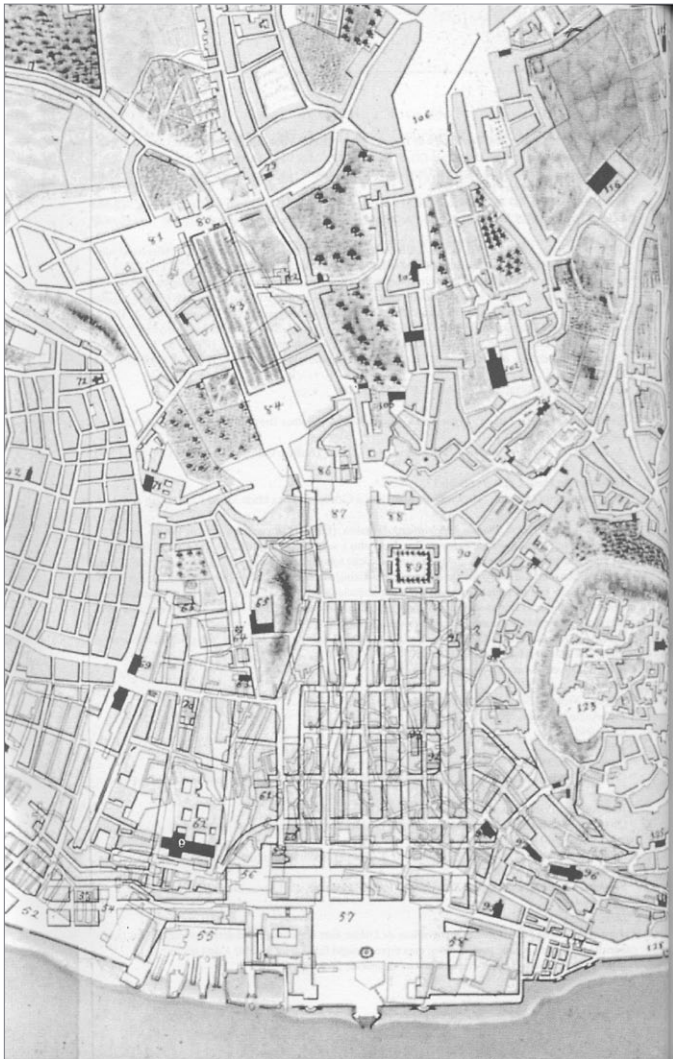
The Paris example, coming over 100 years later, comes closer to what we would consider a code, with rules governing building heights relative to street width, anticipating rules found in early zoning codes. It is more code and less architectural schematics.

These two historic precedents emerged in response to emergency conditions that empowered bold actions on the part of a few enlightened leaders and their planners. They are examples of rare interventions of authority and the political will to impose precise rules in the plan-making process. Regardless of their remarkable legacy, once those exceptional conditions were overcome, or the leaders lost political supremacy, these early form-based approaches lost influence and did not replicate or become widely emulated. In contrast, current proponents of form-based codes are working to make these tools widely available to any community with an interest, and seek to have this type of code become universally adopted as the new paradigm.

The exceptional circumstances under which these two plans were first formulated and subsequently executed suggests that the exercise of the type of authority required was considered unique, which may seem surprising in a period of history when absolute authority over many other aspects of life was routinely exercised.

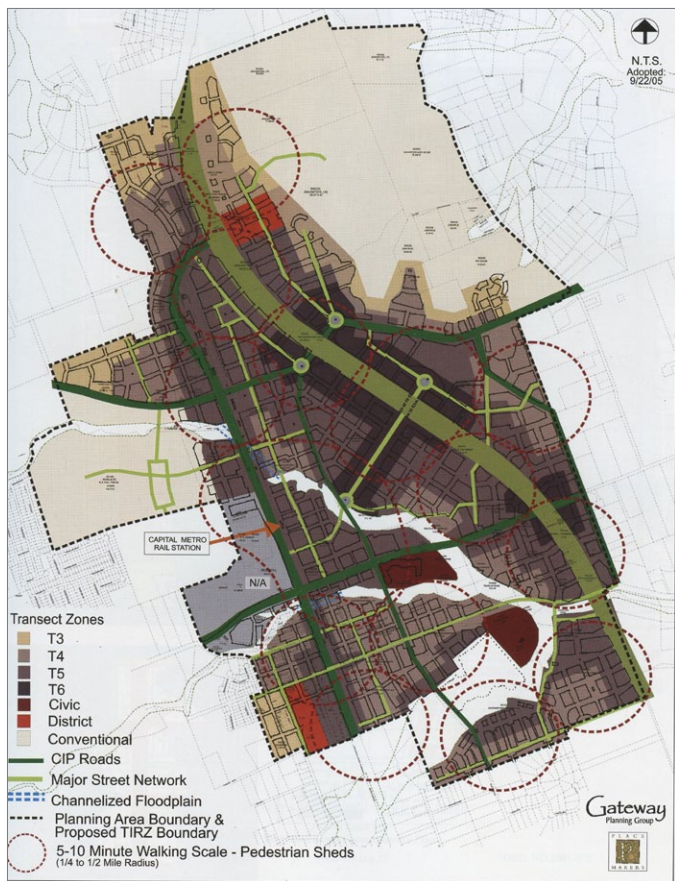
Emily Talen's "Design by the Rules: The Historical Underpinnings of Form-Based Codes" (Journal of the American Planning Association, Vol. 75, No. 2, Spring 2009) provides a useful overview of the wide variety of rules that have shaped city building over time, the very different and diverse motivations behind these rules, and how they constitute historic precedents to the current wave of form-based codes.

[Graphic - The 1756 Plan for the Reconstruction of Downtown Lisbon, from Jose-Augusto Franca]



Leander TOD Regulating Map

A regulating plan coded by transect zones



Different practitioners have chosen one (or more) of these options over the others. It is not clear from the literature whether a consensus preference is emerging or the exact circumstances that dictate when each option is recommended over the others.

The more sophisticated codes attempt to capture and regulate the desired spatial relationships between several of these parameters at once, for example building type, circulation system and public realm. A greater number of variables makes for a richer, more diversified code — covering a wider range of spatial relationships — but also a more complex instrument, with more moving parts.

There are also a variety of formats for displaying the code provisions in graphic and tabular form. Some are more concise, elegant and user-friendly than others.

Private Sector and Public Sector Design Controls

In any discussion of form-based codes, it is important to clarify the distinction between codes that are adopted and implemented by public agencies and codes which are adopted and implanted privately.

Many of the earlier and more celebrated applications of form-based codes in the US — Seaside, Florida and Kentlands, Maryland come to mind — have occurred as part of private sector-driven developments, where a master developer first creates the form-based code with its design controls, obtains public agency authorization to implement it and subsequently imposes the code on other developers that take on sectors or smaller segments of a larger project and individual builders who develop individual lots.

While the built results of this process may appear emblematic of the application of the form-based code technique, there are huge legal and administrative differences between these types of applications and applications of a form-based code by a public agency to situations with multiple land owners and diverse interests.

A master developer — that has acquired entitlement to develop a given property, and is seeking other developers and builders to take on portions of the project, or even individual lots — will always be able to exercise considerably more control over design matters, if they so chose, than a public agency will ever have.

The only possible exception to this in New Jersey occurs in the context of the redevelopment statute, although as a practical matter most redevelopment entities in New Jersey have been unwilling to exercise enhanced control over design matters and have been happy to let the designated redeveloper take the lead on these issues.

V. Controlling Community Form Under New Jersey's Municipal Land Use Law

The ultimate objective of form-based zoning is to control physical form in order to achieve certain desired outcomes, ie traditional neighborhoods, transit-oriented and transit-supportive development, mixed-use downtowns, and in general, compact development.

The MLUL authorizes municipalities to control physical form through community design, and provides specific tools that can be used for that end. The MLUL does not require municipalities to take full advantage of this authority. Some tools, such as the bulk standards attached to the zoning ordinance, are widely used by municipalities; others, namely the provisions allowing municipalities to design their street system and reserve public spaces, are rarely used. Other tools to control community form — such as design guidelines — are not specifically authorized and, as such, reside in a gray area of the law. In some cases, municipalities have embedded design guidelines in their master plans, usually in the land use element, sometimes in specialized elements, such as a “community character element” or a “downtown plan” element. More adventurous towns have included design guidelines in their land development regulations. There is considerable disparity in terms of how far down this road NJ municipalities have been willing to travel.

Master Plan Elements

The master plan provides the foundation for many aspects of local planning, including community design. The master plan’s description of the desired character for the community, and the ways in which that character may vary from neighborhood to neighborhood constitute a solid foundation for the regulatory framework comprising the zoning and land development provisions that will in turn implement those intentions.

Control of physical form at a larger scale is achieved first and foremost through design of the street system and the location of important public spaces, buildings and facilities. These key objectives can be achieved — up to a point — through the land use plan and circulation plan elements of the master plan.

The *land use plan* element (NJSA 40:55D-28) can designate the “[...] existing and proposed location [...] of land to be used in the future for [...] public and private purposes or combinations of purposes”. Public areas are broadly defined by the MLUL to include

- public parks, playgrounds, trails, paths and other recreational areas;
- other public open spaces;
- scenic and historic sites; and
- sites for schools and other public buildings and structures.

The *circulation plan* element can designate the “[...] existing and proposed circulation facilities”, that is to say the vehicular, bicycle and pedestrian circulation network, and can arguably include major parking facilities.

Together, the land use plan and circulation plan elements can define the basic physical framework of the community — its circulation system, including pedestrian and bicycle networks — and the location of all public buildings and public spaces. The land use plan element can similarly depict different neighborhoods, areas

or districts, along with the desired physical character — intensity of development, predominant land uses, building heights, and so forth — for these different parts of the community.

The land use plan and circulation plan elements of the municipal master plan are not merely indicative. They provide one of the two available vehicles — the other being the official map — for municipalities to act proactively and actually design their street systems and reserve specific parcels for public spaces. Although most NJ municipalities have been unwilling to take this initiative, preferring to delegate these responsibilities to the development community, it is not for lack of specific authorization to do so.

Some in the planning community have pointed to the provisions in the MLUL describing the content of the housing plan element 40:55D-28(3) as an additional source of authority for a municipality to control physical form, at least with respect to residential neighborhoods.

The provisions of the land use plan and circulation plan elements can be visually combined in the form of an “illustrative site plan”, depicting the generalized street system, location of major public spaces, location of major civic buildings, generalized distribution of land uses and mix of uses, generalized distribution of densities and intensities, private and public building lots and even approximate building footprints. This is essentially the regulating plan found in most form-based codes, but without the regulatory authority. As previously described, the regulating plan can provide a tangible vision and physical backbone for future development. At the same time, it does not necessarily establish the number and type of buildings on individual blocks, and flexibility and market-driven variations can be allowed.

The regulating plan is not specifically authorized by the MLUL, nor is it prohibited. Some of its key objectives can be achieved through the land use plan and circulation plan elements of the master plan. An illustrative site plan, when adopted as part of the municipal master plan, and if strongly supported by appropriate zoning and land development regulations, will provide considerable clout to the local review agencies in carrying out the community’s design objectives.

Some municipalities adopt, as part of their master plan, discretionary elements such as a “community character element” or a “community design” element. These elements are not specifically authorized by the MLUL, and consequently have less standing than, for example, the land use plan element, but they can nevertheless be viewed as expressions of community’s intentions regarding design.

Official Map

The official map is a powerful tool offered to municipalities for the purposes of controlling community design. Like the land use plan and circulation plan elements of the master plan, the official map gives municipalities the opportunity to reserve land for future street alignments, as well as for public spaces, flood control areas and other public areas. Unfortunately, it is rarely used in present days.

The MLUL refers to the official map in the following terms:

“The official map shall be deemed conclusive with respect to the location and width of streets and public drainage ways and the location and extent of flood control basins and public areas, whether or not such streets, ways, basins or areas are improved or unimproved or are in actual physical existence”. (NJSA 40:55D-32)

The official map gives a municipality the authority to deny permits to build on the reserved areas. The map — showing street alignments, sites reserved for public uses, and areas reserved for stormwater and flood control — provides a very clear picture, to property owners, developers and to the community at large, of the municipality's intentions with regard to physical form and design.

Adoption of the official map does not preclude owners of property encumbered by it from submitting alternative development plans to the municipality, for consideration. If the property owner and municipality are unable to reach an agreement, the lands reserved through official map designation must be purchased for the intended purposes by the municipality, using condemnation as a last resort. Municipalities have one year from the date of approval of a final plat affecting those lands to effectuate these procedures. (NJSA 40:55D-44)

Since most public right-of-way is acquired at no cost to the municipality through the private subdivision process, implementation of the official map without the cooperation of the private property owners can be expensive. As such, it is always advisable to include the affected property owners in a collaborative planning and design process, which can demonstrate conclusively the advantages of the proposed alignments, and to then use the official map as a tool to effectuate that plan. Of course, the municipality can also pursue through the official map alternatives to land acquisition — such as deed restrictions, easements, purchase by a non-profit entity, open space dedication or other — that may achieve the same objectives.

Procedurally, the MLUL requires the official map to be first referred to the planning board (40:55D27A), prior to adoption by the governing body (40:55D-32). The intention is that the official map be generally consistent with the relevant provisions of the master plan. It can be inconsistent with the master plan only if it is adopted by an affirmative vote of the governing body, with the reasons for the inconsistency recorded in the minutes of the meeting at which the action is taken by the governing body.

The official map has been upheld by the New Jersey courts, with some reservations. In a 1991 case — *Nigro v. Planning Board of Saddle River* (122 NJ 270) — the court upheld the integrity of the official map, up to a point. The court confirmed the alignment of major streets and other facilities as shown on the official map, but challenged the official map's authority relative to minor streets. However, this may have been the result of insufficient legwork on the part of the municipality in terms of the areas it wished to reserve, which may not have been actually surveyed in the field. Cox recommends that the official map should be as exact and specific as possible, and that properties targeted on the official map for future acquisition be accurately surveyed in the field.

The city of Hoboken offers an example. The City used its official map to create a new street alignment along its waterfront. The road — an extension of Sinatra Drive — cut through a number of redevelopment parcels, and essentially demarcated the waterfront park and walkway to the East from the new office and residential development to the West. The official map was instrumental in securing the integrity of this important street.

If a municipality wishes to create a new street with a right-of-way in excess of 50 feet, that is not an extension of an already existing street of greater width, then the official map or the circulation plan element of the master plan are the only two mechanisms available to achieve this — the MLUL precludes the subdivision ordinance from mandating this (40:55D-38b2). As a practical matter, any street with more than two moving lanes is likely to require right-of-way in excess of 50 feet.

In summary, the official map is a powerful tool that municipalities can use to design the street network and locate important public spaces. The courts have indicated that the more accurate

the official map, the more effective it will be. If the street alignments shown on the official map have been surveyed and do not raise practical difficulties in the field, they are likely to withstand legal challenge. Some municipalities are also using the official map successfully to designate land for the purposes of open space preservation and acquisition. The identification on the official map of properties targeted for municipal acquisition for open space purposes is an important step in validating condemnation proceedings before the courts.

The value of the official map as a local planning tool may have recently increased in the wake of the NJ Supreme Court's decision striking down municipal set-asides for common open space or recreational areas and facilities — or require payments in lieu of same — in situations other than in planned developments (*New Jersey Shore Builders Association v. Township of Jackson and Builders League of South Jersey v. Egg Harbor Township* A-51/52-08). If municipalities are no longer able to obtain land for common open space and recreational facilities for free, as this decision indicates, then it would appear that the cost of potential land acquisition, the main reason not to use the official map, would no longer apply. And while a municipality cannot compel a landowner to voluntarily dedicate land targeted for public purposes under the official map, without compensation, if the official map is used judiciously as part of a zoning and land development scheme that is advantageous to the landowner, the landowner might find it in their best interest to voluntarily contribute the land.

Zoning and Land Development Regulations

While in NJ the master plan is by and large an advisory document, its intentions are meant to be carried out through the zoning and land development regulations, which are regulatory documents adopted as part of the municipal code. For municipalities with an interest in shaping community design, consistency between the municipal master plan and the provisions of the municipal code is essential.

Zoning Districts

Zoning is a legal mechanism that has generally been used to promote spatial homogeneity of land uses and land development patterns. This homogeneity is achieved by assigning particular land uses and development types to specific areas, and precluding all others. The establishment and delineation of zoning districts and the assignment of permitted and excluded land uses is the very basis of zoning.

As previously discussed, while conventional zoning does not necessarily require a cookie cutter approach, it poses barriers to achieving the type of fine-grained traditional neighborhoods and districts that constitute the basis of smart growth communities. For example, emphasizing important visual terminations with larger or taller buildings or, conversely, by creating a void in the form of a public space is a well-accepted community design strategy. This is difficult to achieve under conventional zoning, since it would differentiate that lot from all others in the district. It is also difficult to create separate districts for each of these special situations, since these micro-districts might be viewed as "spot zoning", a practice that has been conclusively struck down by the courts in NJ and elsewhere insofar as it violates the uniformity clause of the MLUL, which states "The regulations in the zoning ordinance shall be uniform throughout each district for each class of buildings or other structures or uses of land .. but the regulations in one district may differ from those in other districts" (NJSA 40:55D-62a).

Planned Development and Overlay Zones

Better physical planning and community design require a permitting framework which draws a balance between predictability and flexibility, that is to say it contains enough detail to provide certainty of a desirable outcome for the municipality, while providing enough flexibility for the developer to respond to changes in the marketplace and take advantage of unexpected opportunities.

Unlike other states that have recently updated their planning enabling legislation, the New Jersey enabling statute is outdated and contains no reference to “traditional neighborhoods” — the fundamental building blocks of smart growth communities — which generally encourage a mix of housing and building types, land uses, lot sizes and so forth. Traditional neighborhoods require either explicit authorization or considerable flexibility in the regulatory framework, neither of which is currently apparent in the New Jersey statute.

With these caveats, there are two options available under the MLUL for those interested in pursuing traditional neighborhoods — overlay zones and planned developments.

Overlay zones are a voluntary mechanism that creates an alternative land development scenario for a given area or district. Overlay zones can require community design considerations not permissible under conventional zoning, because they are optional, not mandatory. Since property owners are free to develop according to the underlying, conventional zoning, overlay zones do not violate the uniformity clause of the MLUL.

Overlay zones can be quite effective if they offer landowners and developers a much more attractive or lucrative land development scenario than permitted by the underlying zoning. For example, a particular area may be zoned for one dwelling unit per acre under conventional, underlying zoning. The municipality may create an overlay zone allowing, say 10 units to the acre, provided the developer conforms to the provisions of a community design plan. If these provisions are unacceptable, the property owner is free to develop according to the less valuable underlying zoning.

Overlay zones can also be created to deal with specialized issues, for example, parking. A municipality can adopt parking standards through the overlay mechanism that would apply to a specific delineated area and differ from the parking standards established for the same set of uses imposed elsewhere. In cases such as these, it is always advisable, by way of the master plan, to document the empirical conditions that provide a factual justification for the overlay.

Planned Developments: The other flexible mechanism currently provided authorized by the MLUL applies to projects qualifying as Planned Developments, a 1970s construct and, in some ways, an early approximation to traditional neighborhoods. The MLUL identifies four types of planned developments: Planned Commercial Developments (PCD), Planned Industrial Developments (PID), Planned Unit Development (PUD) and Planned Unit Residential Development (PURD).

Planned Developments are, by definition, mixed-use. For example, a Planned Unit Development (PUD) is defined as:

“an area with a specified minimum contiguous acreage of 10 acres or more to be developed as a single entity according to a plan, containing one or more residential clusters or planned unit residential developments and one or more public, quasi-public, commercial or industrial areas in such ranges of ratios of nonresidential uses to residential uses as shall be specified in the zoning ordinance”.

Planned Commercial Developments include commercial and office uses, but also residential; while Planned Unit Residential Developments may include commercial, public and quasi-public, in addition to the residential.

Planned developments need not be very large — 10 acres for a PUD and 5 acres for a PURD — although we could see advantages in further lowering the minimum acreage requirements, or allowing it to be set by local ordinance, as is now the case with PCDs and PIDs. It is important to note that minimum acreages for planned developments need not be contiguous.

The mixed-use nature of planned developments and the relatively low land area thresholds required under the statute combine to provide a tool with greater flexibility to implement a form-based code approach. In the past, NJ municipalities have been content with embedding some level of design requirements in the planned development ordinance, and relying on the developer to work out the actual physical planning framework at the site level. As such, we have not seen examples of situations combining the planned development model with an illustrative or regulating plan, but it is not clear whether the MLUL would preclude this. This might provide a “back door” entrance for form-based zoning in NJ.

General Development Plan: To facilitate the submission, review and approval of larger planned developments (over 100 acres), the MLUL’s General Development Plan (NJSA 40:55D-45.1-8) provisions allow a municipality and a developer to define the key development parameters for an application and a conceptual layout prior to site plan review. These provisions establish a more flexible framework for municipalities and developers to work together, by allowing — through the phasing system — a developer to avoid the up-front submission of final engineering plans and subdivision plats for the entire project. Instead, a developer need only submit the subdivision plat and engineering plans for the phase for which approval is being sought. These provisions currently apply mostly to large greenfield projects, of which there is a diminishing number in NJ. A proposal to make the GDP applicable to urban and older communities by radically reducing the minimum land area requirement is currently pending in the Legislature.

Bulk Standards

The MLUL provides that a zoning ordinance may:

“Regulate the bulk, height, number of stories, orientation, and size of buildings and other structures; the percentage of lot or development area that may be occupied by structures; lot sizes and dimensions; and for these purposes may specify floor area ratios and other ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air, including, but not limited to the potential for utilization of renewable energy sources.” (NJSA 40:55D-65b)

These development parameters are commonly referred to as “bulk standards”, and are widely used in New Jersey, allowing municipalities to regulate, for individual lots, the placement, intensity and character of development, that is to say such things as the amount of open space on the lot, the height of the building(s), the setback(s) from property lines and public rights-of-way, the impervious coverage, and so forth. All of these parameters are of interest from a design perspective.

Bulk standards are directly tied to a zoning district, and it is generally perceived that they must apply uniformly therein. While bulk standards control physical development on individual lots,

they do not provide a mechanism for shaping overall development form, nor do they allow for a fine grained differentiation within each district. Bulk standards can be tied, through a sliding scale, to lot size and may recognize certain locations, such as corner lots. But reliance on bulk standards as the sole or primary mechanism for controlling development form leads almost inevitably to poor community design outcomes.

Subdivision Controls

Subdivision controls allow a municipality to shape the subdivision of land, or “platting” as it is often called, by setting minimum parameters for lot size and lot configuration. Through subdivision controls, municipalities can require new streets to shape blocks of certain dimensions, by setting minimum and maximum parameters from intersection to intersection, and by establishing general rules for block size and configuration. So, for example, the subdivision ordinance may require blocks to have between 200 and 250 feet on the short side, and between 200 and 600 feet on the long side, and to be rectangular. Or, the subdivision ordinance may require all platting to follow a uniform grid, of say 200 by 400 feet.

The subdivision ordinance imposes a rather abstract set of geometric rules that are often at odds with the subtleties of good community design. Municipalities may allow some flexibility in lot sizes, within any block, in response to environmental or other conditions, such that the platting is more responsive to the natural conditions on a site. However, the subdivision ordinance typically establishes a uniform set of rules for the entire municipality, and does not differentiate between different locations.

An intriguing possibility to enhance municipal control over community design and also facilitate form-based codes might be to key subdivision controls to either zoning districts or to different parts of town. There does not appear to be a requirement in the MLUL that subdivision controls be uniform throughout the municipality. If the subdivision ordinance were more closely calibrated to actual conditions on the ground and to important community design intentions, it might provide a powerful tool to advance community design objectives.

Site Plan Standards

The site plan ordinance contains many of the design criteria against which the planning board will judge a given development application. Along with the subdivision controls and the zoning, the site plan standards constitute a municipality’s core regulatory framework for shaping development. Design review at the local level occurs primarily through scrutiny, by a local board, of a site plan submitted for a development application. The site plan will show all the most important physical features of the proposed development.

Most municipalities do not require site plan applications to submit physical information for the area surrounding the proposed development site, such that the physical context is not adequately represented. This means that site plan applications are presented in a vacuum and important relationships with the surrounding area may get lost.

Conclusions

In this section we provided an overview of the mechanisms available under the NJ enabling legislation to control physical form. Form-based codes are sophisticated tools for controlling physical form. But form-based codes, when competently executed are integrated tools: the street standards, building standards, landscape

standards, parking standards and so forth are designed to fit together like pieces of a complicated puzzle. The tools reviewed above, when combined, do not present nearly such a unified vision.

VI. Authority to Enact Form-Based Zoning Codes in New Jersey

Some of the potential characteristics of form-based codes described previously — greater predictability, transparency, simplicity and accuracy — would seem to make them an attractive option for development and redevelopment in some New Jersey’s communities. But since they are not specifically authorized in either New Jersey’s Municipal Land Use Law (MLUL) or in the Local Redevelopment and Housing Law (LHRL), in order to proceed responsibly and with confidence, there is a need to determine how and under what circumstances form-based codes can be used in the State.

In order to clarify if - and under what conditions - form-based codes might currently be considered authorized in New Jersey, we did the following:

1. Carefully reviewed the provisions of the MLUL and of the redevelopment statute.
2. Reviewed relevant case law.
3. Examined the literature on form-based codes and conventional zoning.
4. Consulted with members of prominent planning firms, academics and land use attorneys, who were asked to consider existing statutes, relevant case law and planning practices and to help determine the boundaries within which form-based codes might legitimately be used.
5. Examined examples of New Jersey codes described by their authors as being “form-based”.

The question of whether local governments have authority to enact form-based codes is an issue which has been discussed by other states and which has been addressed in a number of ways. In “Dillon’s Rule” states — where municipalities are granted only limited regulatory authority — the consensus is that states must grant explicit authorization for local governments to adopt form-based codes. Some states — such as California, Wisconsin, Pennsylvania and arguably Connecticut — have opted to do so.

In 2004, California passed Assembly Bill 1268, which expressly authorizes form-based codes.

The law authorizes local control over community form and design:

“The text and diagrams in the land use element that address the location and extent of land uses, and the zoning ordinances that implement these provisions, may also express community intentions regarding urban form and design. These expressions may differentiate neighborhoods, districts, and corridors, provide for a mixture of land uses and housing types within each, **and provide specific measures for regulating relationships between buildings, and between buildings and outdoor public areas, including streets.**” (emphasis added)

In “home rule” states, local governments are granted greater discretion with respect to local legislative activities, as well as the presumption of validity. New Jersey is generally considered

a “home rule” state, and New Jersey courts have been generally deferential to local governments in recognizing a presumption of validity with respect to land use matters.

This notwithstanding, New Jersey courts have also struck down a number of municipal legislative initiatives when they considered that the activities proposed were not specifically authorized under the MLUL. West Windsor’s elaborate “timing and sequencing” ordinance controlling access to public sewers was struck down by the New Jersey Supreme Court in 2002 precisely for this reason. Other examples exist. As such, New Jersey municipalities should be cautious when adopting new procedures or requirements not explicitly authorized by the MLUL.

In “Form-Based Land Development Regulations” (The Urban Lawyer, Vol. 28, No. 1, Winter 2006), Robert Sitkowski and Brian Ohm argue that states may not need express legislative authorization for form-based codes if their enabling planning statute is modeled on the 1926 Standard State Zoning Enabling Act, which authorizes states to regulate:

- height, number of stories, and size;
- lot coverage;
- yards, courts, and other open spaces;
- density;
- location and use of structures and land.

The language of the MLUL does not explicitly reflect these parameters. The “Purposes” section (40:55D-2) covers a broad range of topics, including fairly specialized ones, such as the “promotion of renewable energy resources” and “to encourage senior citizen community housing construction”. The purpose of promoting a “desirable visual environment through creative development techniques and good civic design and arrangement” is encouraging, but also vague and subject to interpretation.

The Purposes of the MLUL are general and neutral with respect to particular planning intentions: “promote the public health, safety, morals, and general welfare”, “secure safety from fire, flood, panic and other natural and man-made disasters”, “provide adequate light, air and open space”. With a few exceptions — such as “promote the free flow of traffic”, a particularly outdated concept in a world more interested in traffic calming and complete streets — the Purposes represent worthy public policy objectives which are removed from particular approaches to planning.

Significantly, purposes such as to “promote land development patterns that support transit and non-vehicular forms of transportation”, “promote mixed-use, mixed-income communities”, or “promote compact development and prevent sprawl” are nowhere to be found. The word “building” is not used in the purposes, nor is there any mention of providing “specific measures for regulating relationships between buildings and outdoor public areas, including streets”, as in the California language.

In light of this, we are skeptical that Sitkowski’s argument, on its own, will do much to calm the concerns of New Jersey planners and land use attorneys with respect to authorization.

The question of authorization is further complicated in view of the two distinct, albeit inter-twined systems authorizing planning and zoning activities in New Jersey: the MLUL and the Redevelopment Statute.

The MLUL is the enabling planning legislation, authorizing municipalities to establish Planning and Zoning Boards, create Master Plans and adopt zoning and other land development regulations. The MLUL is exercised in each of New Jersey’s 566 municipalities. The MLUL authorizes municipalities to create a planning and regulatory framework to guide development, but largely assumes that implementation of that framework will occur through

private sector initiative, through applications for development. The public sector posture is reactive. And although the governing body and planning board can seek to incentivize (re)development, through zoning changes and other incentives, they are by and large unable to compel private parties into action.

The redevelopment statute, on the other hand, creates a parallel system that can be applied in municipalities where certain areas have been determined locally to meet the statutory criteria for an “area in need of redevelopment” or an “area in need of rehabilitation”. This parallel system over-rides or overlays some of the mechanisms of the MLUL, including zoning provisions, and empowers local governments to take a much more interventionist approach with respect to land development and redevelopment. Local redevelopment entities are designated by the municipal Governing Body.

While the State does not have a reliable mechanism for tracking local redevelopment entities and their activities — (Somerset County periodically compiles a comprehensive inventory of redevelopment activities undertaken by its municipalities, but no other county appears to do the same) — anecdotal evidence suggests that until recently, the number of redevelopment entities and the volume of redevelopment activities in New Jersey was on the rise. This has changed in the last few years as a result of the decline in the economy, the constrained capital markets, a series of confusing judicial decisions which clouded certain legal aspects of the application of the statute and political apprehension regarding the use of eminent domain on behalf of third parties, a practice authorized by the redevelopment statute.

Given the profound differences between the MLUL and the redevelopment statute, the question of whether form-based codes can be legally undertaken in New Jersey and under what circumstances needs to be explored separately within the context of these two systems.

Local Redevelopment and Housing Law

Given the aggressive and interventionist role which the redevelopment statute stakes out for local governments with respect to land (re)development activities, it is not surprising that there is general agreement within the planning and legal communities that form-based code type regulations can be used in New Jersey in projects developed under the redevelopment statutes.

While the LHRL does not specifically authorize form-based codes by name, there is consensus in the legal and planning communities that the level of plan specificity authorized by the statute can encompass form-based code type regulations. (This will be confirmed by the case studies, below).

In addition, in terms of plan and code implementation, the designation of a (re)developer and the voluntary nature of the (re)development agreement allow local governments to achieve levels of plan specificity equivalent to those achieved by form-based codes elsewhere. The redevelopment plan is implemented through a redevelopment agreement, a legal contract between the redevelopment agency or entity and the (re)developer. The designated redeveloper agrees to follow the redevelopment plan and abide by the terms of the redevelopment agreement. The agreement is a voluntary commitment and the (re)developer is not compelled to sign it.

The (re)developer can seek to have the redevelopment plan amended as well as the terms of the agreement, but again the voluntary and contractual nature of the relationship are unique and not comparable to the relationship between a property owner/developer and the local entitlement agency under the MLUL.

While not many redevelopment agencies appear to have taken advantage of this enhanced level of control to shape physical form — focusing instead on the financial and other aspects of the agreement with the (re)developer — form-based code type regulations are increasingly applied by a growing number of practitioners in redevelopment projects around New Jersey, so far without legal challenge. Examples include adopted codes in Belmar, Bloomfield, Jersey City, Newton, Newark, Dover, Woodbury and others.

Municipal Land Use Law

It is much less clear whether form-based regulations are permissible in the context of New Jersey’s MLUL. The following represent some of the challenges to using form-based code regulations under the MLUL:

- The MLUL does not openly contemplate the notion of a “regulating plan” - a common, many would say indispensable, element of form-based codes. Regulating plans define specific block sizes and shapes, establish a precise framework of street alignments and locate public buildings and public spaces. There are profound differences between a regulating plan — which defines the location of streets and public spaces and the building types that are allowed to front on them — and a conventional zoning map. These differences may be irreconcilable under the MLUL.
- Regulating plans are fine grained and may create “micro-districts” of uses and building types, which could be subject to spot zoning challenges.
- As discussed previously, the street network and public space components of a regulating plan can be implemented through the official map and/or the circulation plan element of the municipal master plan. However, if a landowner challenges these provisions, and proposes a different plan, the municipality must either acquire the right-of-way or forfeit the plan. In addition, case law has created a precedent requiring a municipality to precisely identify on a survey the affected areas. The survey is to be performed at the municipality’s expense.
- Architectural standards continue to be a controversial area for local regulation.

In situations with an established block structure and fixed street network a form-based code may be permissible in New Jersey provided it does not try to change these spatial parameters, ie does not try to create a new public space at a specific location or reserve a specific site for a public use. In these situations the existing framework of streets, blocks and public spaces largely substitutes for the regulating plan and provides the framework for the coding. If the form-based code does not challenge these existing conditions then it likely fits within the framework of conventional zoning, albeit with a finer grain set of regulations applied to buildings. The code developed for downtown Haddonfield (see below) is a good example of this approach.

However we believe that if a form-based code were to contain provisions that significantly deviate from existing conditions — for example, propose new right-of-way alignments or the location of new public spaces — the issues mentioned above become problematic. The review of the New Jersey experience to date with form-based codes did not reveal any such applications.

In the previous section we suggested that certain tools currently available under the MLUL, namely the “planned development” provisions, might provide a back door opening towards form-based code applications. A threshold question for the New

Jersey planning and land use communities to ponder is whether a back-door approach is satisfactory or whether the state would be better off addressing the issue directly and decisively.

A number of opinions have been expressed on this subject recently that are worth mentioning, some coming from the legal side of the field, and others from the planning side.

In an article in the November 2009 edition of the New Jersey Planner “Form Based Codes and Municipal Land Use Law — perfect together or too disruptive for most NJ municipalities?” Richard Clark, Esq. of Laddey, Clark and Ryan and an associate counsel with the New Jersey Planning Officials remains agnostic as to whether form-based codes are sanctioned under the MLUL or New Jersey case law. Clark does suggest that the MLUL is based on “Euclidean” planning concepts (ie Village of Euclid v. Ambler Realty 272 U.S. 365, the landmark case that validated zoning) which are focused on limiting or proscribing land uses. Clark also raises concerns regarding how form-based codes may affect constitutional aspects of freedom of individual and commercial speech, as well as substantive and procedural due process rights of individuals with respect to any architectural and aesthetic standards contained in the codes. From our perspective, these issues are equally valid for conventional codes containing architectural design provisions and appear unresolved in legal terms. Clark also suggests that the MLUL would have to be amended to enable or outright authorize form-based codes.

On the other hand, Stan Slachetka, PP/AICP, a well-regarded professional planner practicing with T+M Associates, expressed a contrary opinion in the February edition of his blog “Planning Perspectives 360”. Specifically responding to Clark’s article, Slachetka suggests that the regulating plan, two- and three-dimensional graphic representations of building forms and streetscape cross-sections and plan views — that is to say the graphic elements of a form-based code — are increasingly found in conventional New Jersey codes. Slachetka does concur that an amendment to the MLUL is needed to explicitly authorize the practice.

This exchange exemplifies how well-established professionals in the field have different views regarding the current legality — or lack thereof — of form-based codes in New Jersey. On the need for clarification and explicit statutory authorization, on the other hand, there appears to be consensus.

We might also add that while many of the graphic elements of form-based codes are commonly used in New Jersey (as Slachetka correctly points out) they do not add up to true form-based codes, because they are disparate pieces that do not present a comprehensive, integrated regulatory system.

VII. An Overview of Form-Based Zoning Applications in New Jersey

This section provides an overview of the New Jersey experience with form-based codes and hybrid codes to date.

Some practitioners are labeling their work as belonging to the form-based code family, while others are not. As we shall see, the codes reviewed in this section are very different. The variety of approaches taken, both formally in terms of code structure as well as substantively in terms of code content illustrates how different New Jersey practitioners have interpreted and adapted the form-based code concept to both respond to the particulars of their specific projects as well as to reconcile their code proposals with their own interpretations of what is permitted under New Jersey law.

The comments provided are not intended as a critique of this work, rather an analysis intended to highlight the wide range of approaches and significant differences in scope found among the projects reviewed.

It has been suggested that it would be useful to be able to compare these projects in terms of cost, types and levels of outreach to the public, time frame to completion, size of the study areas and ownership patterns. However, much of this information was not available to us and is not within the scope of our review. We present it only when it was available.

Washington Town Center

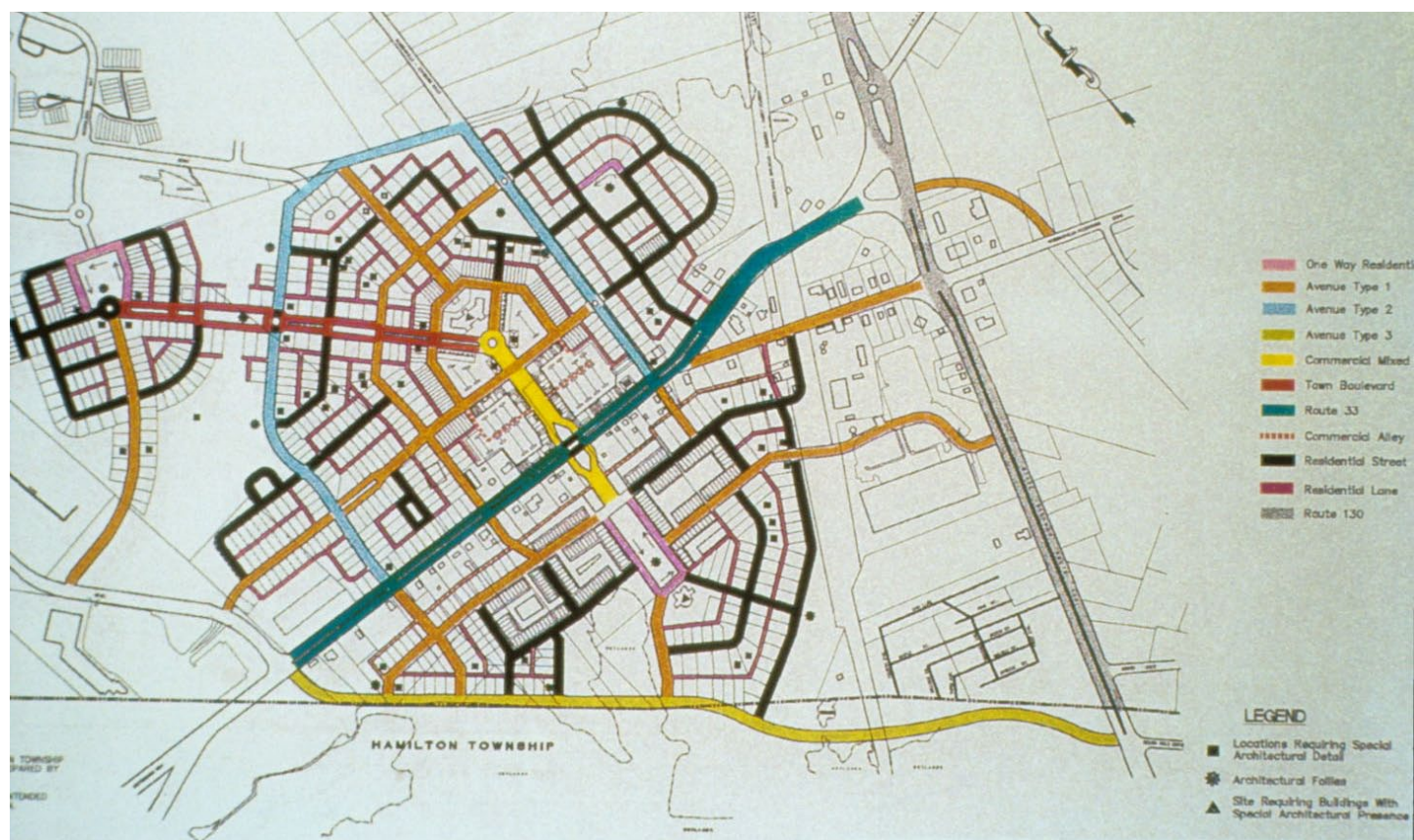
The grand-daddy of form-based codes in New Jersey is the code developed by A. Nelessen Associates in 2001 to implement the Washington (Mercer) Town Center Plan. Washington Town Center is a 325-acre mixed-use new urbanist community located 20 minutes from Trenton. The town center was planned to provide the rural, but rapidly suburbanizing Washington Township (now Robbinsville) with a functioning town center. The town center plan was coupled with a farmland and open space preservation strategy in other parts of town. The town center is now largely built out and has by all accounts been well received by the public and a striking commercial success.

The original code was tweaked and vigorously implemented by Robert Melvin, the town planner, with the assistance of other consultants. The town center was first formally identified in the municipal master plan. The town center plan and code were implemented through a zoning overlay, which left the suburban-leaning, conventional underlying zoning intact. The overlay zone was skillfully crafted to provide significant incentives to landowners (additional density, greater range of building types and land uses, etc) such that prospective developers *voluntarily* choose to follow the town center's form-based code regulations.

Because this was an early example of the application of new urbanism principles in New Jersey, the town planners struggled with the development community, which was at first skeptical that the market would support the smaller lot sizes, higher densities, mixed-use, alleys and other features of the plan. Compromises were reached and ultimately the plan was executed.

The potential drawback to the overlay zone or voluntary approach is that if one property owner chooses not to develop, or chooses to develop differently, an entire plan can be compromised or even negated.

Washington Town Center: Street Regulating Plan



The *New Egypt Redevelopment Plan*, prepared by David Roberts of Maser Consulting and last revised in May of 2010, provides for redevelopment and rehabilitation in the area of New Egypt designated as a Town Center by the State Planning Commission. The redevelopment plan does not replace existing zoning, although it does shift zoning district boundaries, provides for additional uses and adds specialized bulk and design standards as an overlay to sections of rehabilitation and redevelopment areas to promote specific types of uses, namely a planned age-restricted residential development. The plan seeks to “achieve a smart growth vision that channels residential and commercial development into designated areas in order to preserve open space in surrounding sections of Plumsted”.

The Redevelopment Plan was preceded by a *Preliminary Vision Statement and Downtown Design Guide*, submitted in July of 2008 as part of the town’s petition seeking Plan Endorsement from the State Planning Commission. This guide discusses permitted uses, building design standards, signs and parking and contains a parcel by parcel inventory of the downtown area. No coding was attempted.

New Egypt’s downtown is zoned C-4. The redevelopment plan divides this district into four sub-areas: downtown core, highway business fringe, residential fringe and future growth area. The plan states that the underlying goal of presenting form-based standards is “to accommodate new growth in such a way as to preserve the traditional town-like character of New Egypt. This goal will be accomplished by balancing building size of existing structures and infill through the use of good composition of building elements”. Section 1.3.2 of the plan *Design Parameters for Sub-areas* contains line graphics and photos illustrating desired conditions for the Downtown Core Area in terms of building location, facades and entries, ground-level use and parking and design. The Highway Business Fringe Area and the Residential Fringe Area provide less design detail. The Future Growth Area has provisions regarding roofs, front porches, fences and rear garages. In addition, there are Supplemental Standards in narrative form that apply to all four sub-areas.

Although New Egypt is a redevelopment plan, and therefore benefits from an enhanced level of authority, it reads like a conventional zoning code that has been supplemented with some graphics and diagrams and illustrative design guidelines. There is no coding of the existing fabric. There is no regulating plan. The subdivision of the C4 district into four sub-areas does reflect the need for a finer grain approach than that expressed in the underlying zoning. But the absence of many of the features commonly associated with form-based codes suggests that this is the most conservative interpretation of a form-based code among the projects reviewed.

The planner explains that “the fabric of New Egypt was too inconsistent to lend itself easily to a typical form based structure” and consequently they “opted to apply design standards based on the existing buildings within the Historic District, which also varied widely in styles and form”. The planner adds that they “may have been able to do a “regulating plan” for the Downtown Core, but it is small in size and linear in form without a regular grid, so being relatively flexible and leaning on LEED-ND standards, rather than taking a more typical prescriptive form based approach using a regulating plan and dimensioned graphics for each subarea seemed more appropriate.”

The Upper and Dennis codes were both prepared by Marcia Shiffman of Maser Consulting and are very similar in both format and content.

The Upper code — which has been adopted — applies to the core areas of two centers designated by the State Planning Commission: Marmora-Palermo-Beesley’s Point Town Center and Seaville Town Center. The Marmora-Palermo-Beesley’s Point Town Center is a corridor with three distinct areas linked North/South by Route 9, from the Great Egg Harbor River to the north to Butter Road to the south. The Marmora Town Center totals 3.4 square miles and has a population of 3,500. The Seaville Town Center encompasses 2.9 square miles and has a population of 3,300. While providing for a variety of land uses and some diversity of housing types, the two centers currently have limited density, due at least in part to the absence of public sewers. The land use pattern is discontinuous and pedestrian infrastructure is limited. As such, the code seeks to retrofit the existing pattern where necessary, as well as promote some higher-density new infill development where appropriate, in order to reinforce their role as growth centers.

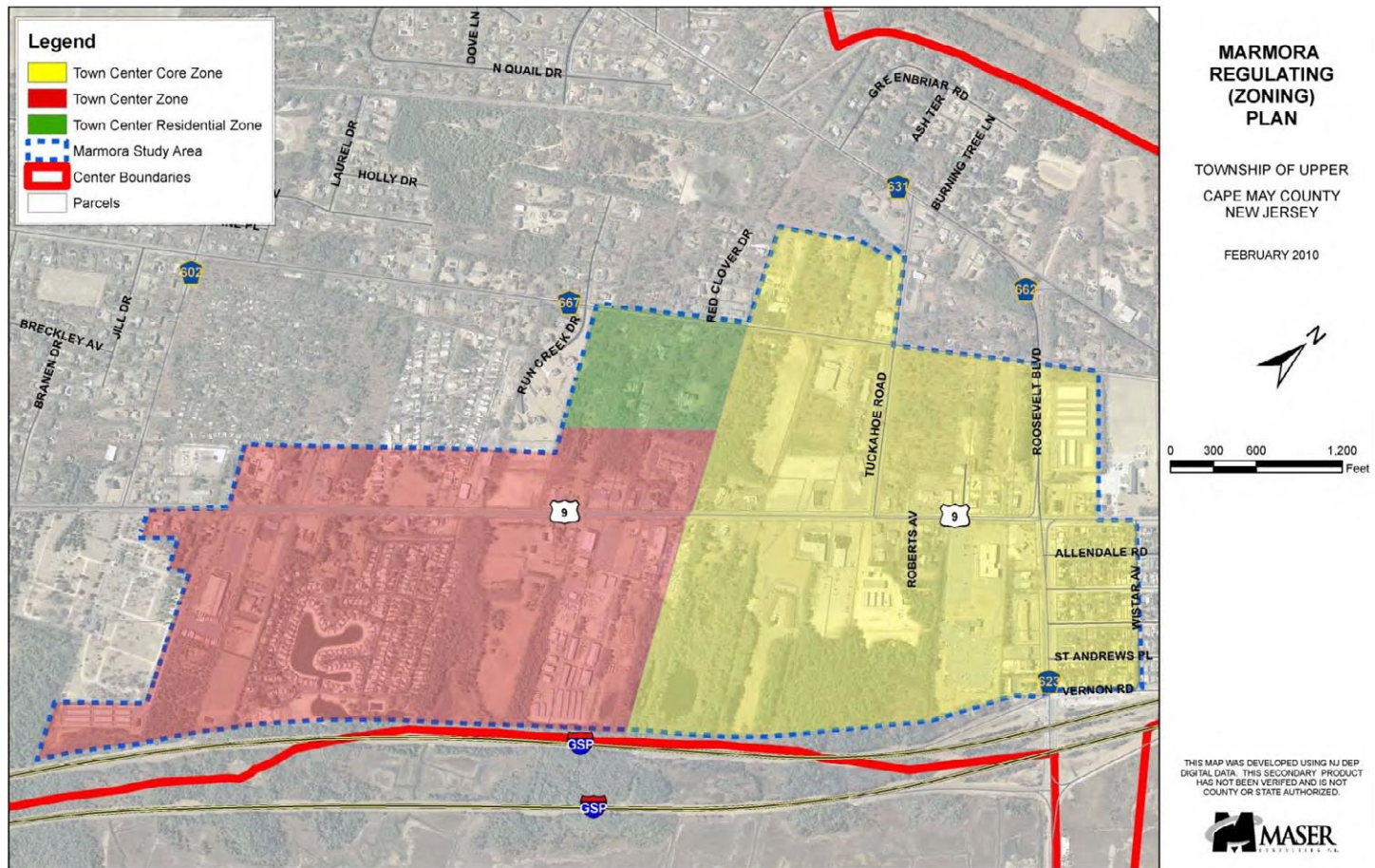
The Dennis code applies to the communities of Dennisville, South Dennis, South Seaville, Clermont and Ocean View. Ocean View and Clermont are proposed town centers under New Jersey’s state planning process; the others are proposed villages. All are within the CAFRA area; none have public water and sewer at this time, although there are expectations that these services will be installed in the future. Dennisville is on the State and National Registers of Historic Places; it is also within the Pinelands. The two proposed town centers include vacant land available for growth; the three proposed villages are largely build-out with limited land available for growth.

The planners followed a similar process in tackling the two codes. They undertook a planning analysis of the study area(s); hosted workshops with local stakeholders; administered questionnaires; and undertook a variety of mapping exercises where they asked the participants to evaluate “susceptibility to change”, identify mobility needs and possible new street connections and probed preferences in terms of street character and building types and scale. The results led to a short vision statement and translated into the codes. The codes were preceded and called for in previous amendments to the municipal master plans.

The codes create up to four zones within the town centers — “town center”, “town center core”, “town center residential” and “town residential” — and two in the villages: “village residential” and “village commercial”. Some districts are growth oriented, while others are preservation oriented.

The code is illustrated, with line drawings of plan views and cross-sections, diagrams and renderings depicting desired typical conditions for each district, in a user-friendly fashion. It specifies building placement, building form, parking location, encroachments, frontage types and permitted uses.

The regulating plans are really zone district maps. They depict the various proposed zone districts and do not show proposed building footprints, proposed street alignments or proposed public spaces. The codes do contain separate Street Regulating Plans, which code streets by category: alley, neighborhood street, town center street, boulevard, connector, Route 9 and county road, and also identify circulation improvements, such as proposed pedestrian cross-walks, roundabouts and gateways. The code also contains illustrative cross-sections for each street type, including curb-side parking, landscape and street furniture standards. Open space and park standards occupy a separate section, which identifies a hierarchy of parks (community park, town center plaza, residential



square, pocket plaza) and stipulates minimum sizes for each, but not their locations. The code contains a chapter on signage and a chapter on architectural guidelines.

Ocean City

The 2009 Community Design Guidelines for Ocean City were prepared by Heyer Gruel and A. Nelessen Associates. The need for such a document had been identified in the City's 2006 Re-Examination Report. According to Elizabeth Terenik, the Planning Director, the City's intention is to eventually make the guidelines regulatory, by adopting them as part of the code. For now, they are advisory. The City has been using the streetscape standards to inform its own procurement with respect to street furniture (planters, trash receptacles) and streetscape projects. The City has also created a brochure containing the architectural standards and is distributing it to interested merchants and property owners through the local Main Street program.

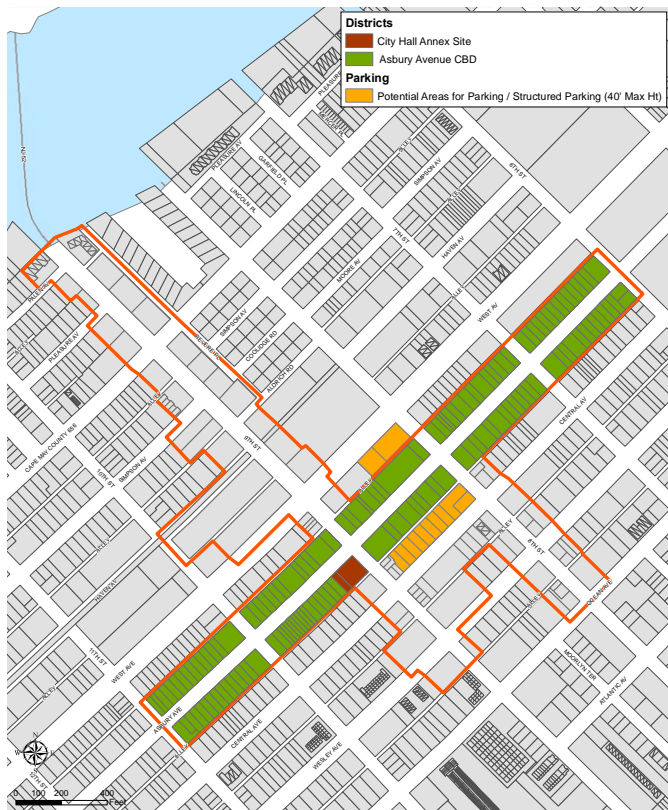
The Community Design Guidelines apply to a single zoning district — the CBD zone — and encompass a roughly 8-block area on both sides of 9th Street, a five-block area on both sides of Asbury Avenue and a two-block area on both sides of 8th Street. The guidelines are organized under the following sections: introduction, form-based code, regulating plan — central business district core, street profile standards, streetscape standards, architectural standards, implementation recommendations and regulating plan definitions.

There are several maps labeled as "regulating plan". The first is color coded to indicate the area occupied by the Asbury Avenue CBD, potential areas for parking/structured parking and the locally significant City Hall Annex site. The second is labeled

Height Regulating Map and is color-coded to indicate maximum building heights, ranging from 2.5 floors or 33 feet to 7 floors or 75 feet. The maximum height along the 9th Street corridor is 2.5 stories, while the predominant maximum height along Asbury Avenue is 3 stories. The document indicates that "areas identified for heights in excess of 50 feet are limited to sites where existing structures exceed these limits." If we interpret this correctly, the code allows five categories of building heights within this district. The two tallest categories — 4 floors and 7 floors — correspond to existing buildings with those heights; and existing buildings in the other categories do not exceed the stipulated maximum building height.

Ocean City Guidelines: Regulating Plan Map

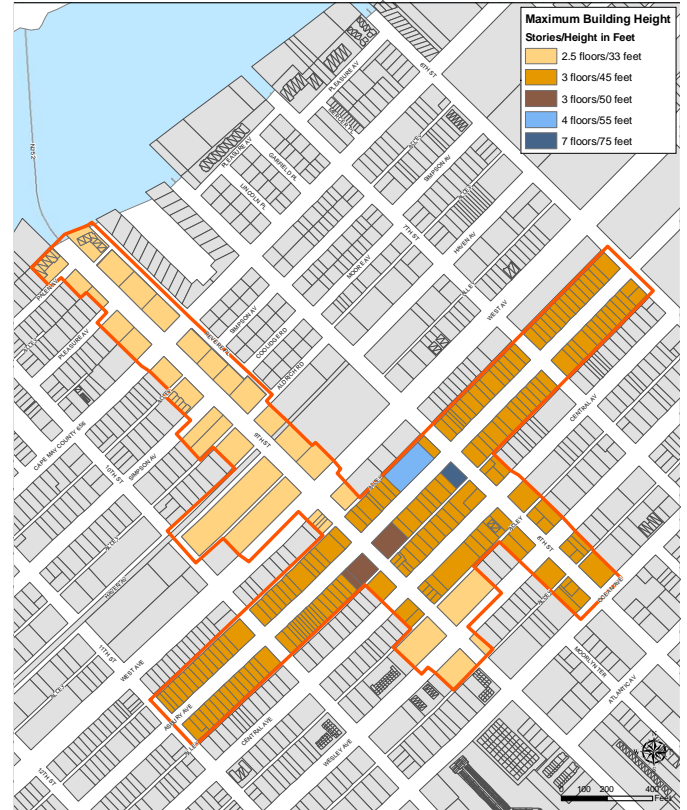
Heyer, Gruel & Associates



There may be good reasons for the varying heights established by the planners, and we understand the taller buildings are there already. But assigning different maximum building heights within the same district would appear to flirt with violating zoning's uniformity principle. There is a discussion of the importance of the location occupied by the City Hall Annex site (which is proposed to be limited to three stories), but no comparable discussion or justification of the sites designated for four and 7 stories. When the City moves to adopt the code as regulatory, it will be interesting to see if these provisions are maintained in their current form.

Ocean City Guidelines: Maximum Building Height

Heyer, Gruel & Associates



This document does not code building types. It contains two building envelope standards: for lots up to 60 feet wide, and for lots wider than 60 feet. It contains a street typology, with cross-sections and street standards, but does not relate these to building types. The streetscape standards — which identify general locations for trash cans and benches, for example, and provide specs for tree grates — seem more in the nature of a plan, than a code.

It is confusing to have a “form-based code” embedded in a document entitled Community Design Guidelines. Codes are mandatory, not voluntary like guidelines. The code contains language indicating that variances will be required to allow deviations from certain provisions. Standards trigger variances; guidelines may require a waiver, at most. These seeming inconsistencies suggest that the authors of the guidelines/code may have felt conflicted with respect to how far they could go and how to present their work.

Metuchen

The Metuchen code, which has not yet been adopted, applies to a 5-block area of the downtown between Main Street, Middlesex Avenue, Lake Avenue and the Northeast Corridor. The area lies within two zoning districts — the Business 1 (B-1) and the Downtown 1 (D-1) — and contains several large, Borough-owned commuter parking lots, as well as privately owned surface parking. The area is clearly underutilized, albeit one block from Main Street. Participants in public workshops organized by Looney Ricks Kiss Architects, the Borough's planners, pointed to this area as a void or “no man's land” between the lively downtown and train station area and the new residential neighborhoods to the north.

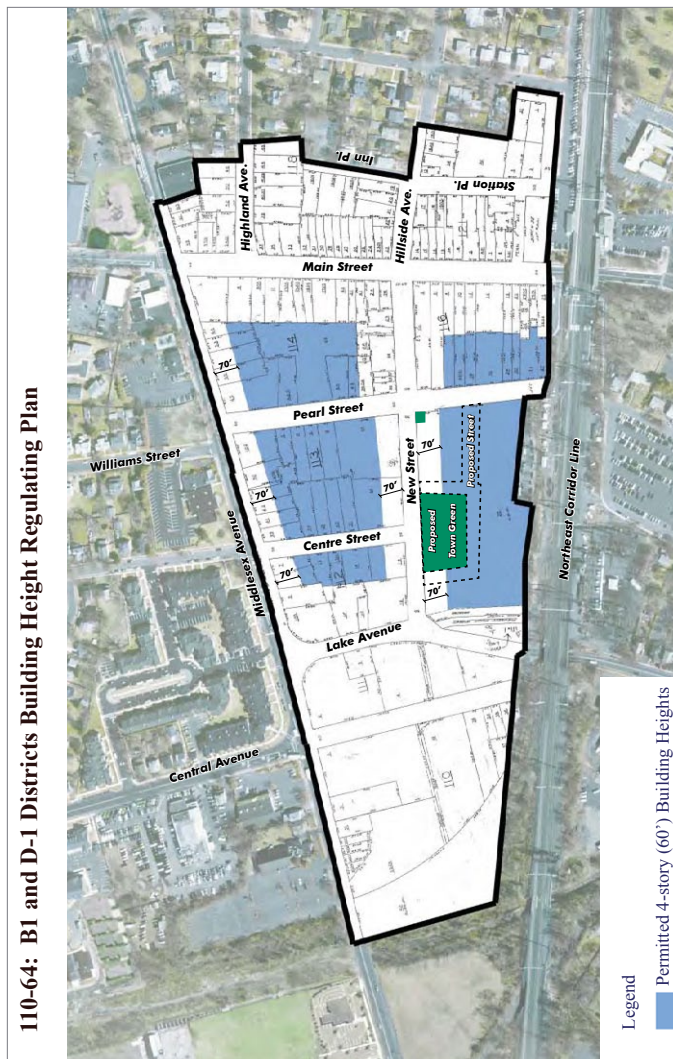
The Borough has not relied on New Jersey's redevelopment statute in the past, and has instead successfully sought to incentivize and control market-driven redevelopment through convention-

al zoning techniques. A considerable amount of privately-driven redevelopment, both residential and commercial has occurred in and around the downtown in the last 20 years.

In addressing this 5-block area, the Borough again chose not to use the redevelopment statute, or even to create a new zoning district. Instead, the planners chose to define the 5-block area as an overlay, and apply a series of overlays modifying certain provisions of the two underlying zoning districts:

- A front yard setback overlay would modify the underlying zoning provisions and introduce a new way of measuring building setback — from the curb, and not from the right-of-way, as is otherwise the case elsewhere in the Borough.
- A building height overlay would allow maximum building height to go from three to four stories in certain mid-block, less visible locations and up to 6 stories in the Planned Unit Commercial Development district overlay (see below).

B-1 and D-1 Districts: Building Height Regulating Plan



The planners propose to amend the language of the B-1 and D-1 districts to include a new provision codifying five “building frontage” types: the “Main Street building type”, the “Town Center attached” building type, the “Hotel/Office/Apartment” building type and the “Kiosk” building type. The proposed code provisions describe each of these building types. These building frontage types

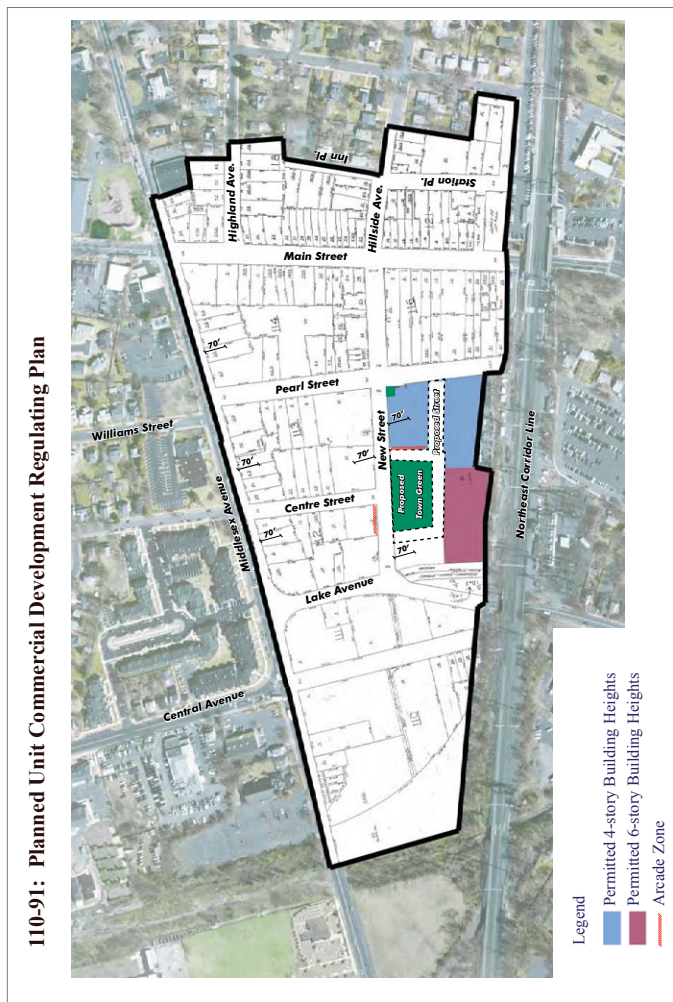
are not geo-coded, so they would appear to be permissible anywhere within the two districts. It is not clear whether the planners intend these to be the only permissible building types.

The proposed Metuchen code would also take advantage of the Planned Unit Commercial Development provisions of the MLUL. The proposed code would allow PUCD’s in the D-1 district with a minimum lot size of three acres and a minimum of 400 feet of frontage on one of three designated streets. The proposed code contains a “Planned Unit Commercial Development Regulating Plan” (PUCD) which shows a proposed town green, a proposed new street around the proposed town green, two sites facing the proposed green where 4-story buildings would be permitted and one site, also facing the green but backing up to the Northeast Corridor line, where a 6-story building would be allowed.

It should be mentioned that the proposed new street and the proposed new town green are shown on publicly-owned land (Borough-owned commuter parking lot land), so reserving the land for the street right-of-way and public space is a public action that does not involve private property rights.

The PUCD is being proposed as a legal device to allow building height to vary within the same zoning district: 6 stories on one parcel, 4 stories on the adjacent parcel.

As this report goes to print, the Borough attorney is reportedly having second thoughts about whether the proposed PUCD application is advisable and/or permissible. If the intention is to make form-based codes widely available in New Jersey, the State must address the reasons behind this type of legal probing in a definitive manner. There is no possible justification for keeping this type of legal ambiguity from being definitively resolved.



Haddonfield

The 2008 Downtown Haddonfield Zoning Code was prepared by Brown & Keener Bressi. It was preceded and carefully justified by a detailed analysis contained in a 2006 amendment to the municipal master plan.

The 2006 master plan amendment contained a detailed discussion of many of the substantive areas covered by the code, including a discussion of uses, acceptable dimensions for building footprints, intensity and parking. It recognized that the current code contained regulations that produced buildings that “do not relate well to the existing texture of the Downtown Area”.

A single zoning designation (CBD) encompassed large and disparate portions of the downtown, from the historic heart of the old King’s Highway to the northern reaches of Haddon Avenue. These areas had very different physical and economic characters. The master plan amendment identified a series of “character areas” and recommended sub-dividing the CBD district into 8 smaller sub-districts, so zoning regulations could be finer grained and better fit with the diversity of conditions on the ground.

The master plan amendment also contained principles and guidelines governing urban design, architecture and the public realm; a historic preservation strategy; a circulation and parking strategy; an affordable housing strategy and a phasing proposal. Altogether, the master plan amendment provided a firm foundation for the code changes.

Significantly, the code does not call itself a form-based code and is simply presented as an amendment to the Borough’s Land Development Ordinance. Ultimately, the CBD was carved into only four new districts, not 8 as suggested by the master plan. But three of the four districts apply in several locations and some of these sub-districts are very small.

The code itself contains a series of general standards for downtown districts (bulk, building heights, doors and windows, driveways, porches, stoops and other encroachments, frontage, entrances, ground floor elevations and so forth); specific standards for each of the four districts (uses, setbacks, lot occupation, height, parking placement and appearance) and a detailed discussion of 15 building types for which there are local precedents, cross-referenced to the 4 districts and to the range of permitted uses.

There is also a section on accessory structures and downtown parking standards.

The code is elegantly presented, with a preponderance of easy-to-read graphics and tables and limited narrative.

The code does not contain a street regulating plan, nor does it make any attempt to code streets or other public or private rights-of-way.

Building Types/Permitted Uses

SECTION 135-38 | DOWNTOWN DISTRICTS

(5) Permitted Uses

Permitted uses by Building Type are identified in § 135-38.E.(5) Figure F. Conditional Use requirements are identified in Article VII § 135-65A.

§ 135-38.E.(5) Figure F - Permitted Uses by Building Type

BUILDING TYPES	PERMITTED USES															
	Business Office	Dwelling Units *	Home Occupations	Home Office	House of Worship	Municipal Use	Personal Service	Professional Office	Restaurant	Retail	Bank or Savings Institution	Parking (Primary Use)	Daycare	Private School	Gasoline Station	Studio
Apartment Building	AB	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Civic Building	CB	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Cottage House	CH	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Courtyard Building	CO	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Flex Building	FB	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Liner Building	LB	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Live-Work	LW	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Manor House	MH	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Podium Building	PB	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Sideyard Building	SB	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Single-Family Detached House	SFD	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Special Corner	SC	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Townhouse	TH	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Twins	TW	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Accessory Building or Structure	ACS	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

NOTES:

P = "Permitted" (Use can be applied to this Building Type)

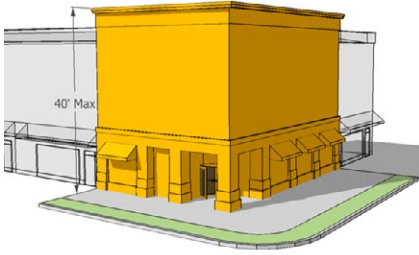
C = "Conditional" (May be permitted, with conditions)

X = "Not Permitted" (Use is prohibited in this Building Type)

* Dwelling Units in Mixed-Use Buildings may not be placed on the Ground (first) floor, except in Live-Work Buildings that do not front on to King's Highway.

(17) Special Corner Building

(a) Typical Condition / Siting Example
For illustrative purposes only



(b) Description
A variant of the Flex Building for corner lots on major streets. Front and side setbacks are set to zero to allow for "holding the corner." This building is encouraged to have its main entrance at the corner, if it has only one, or it should have one on each street-fronting side if there are two.
The allowable height for this building type will be 40' at strategically-chosen lots. These are the corners of King's Highway and Chestnut, Tanner, and Haddon.
Special Corner Buildings along King's Highway must have Retail Uses on the Ground Floor.

(c) Local Examples
Many of Haddonfield's corners have conditions similar to these. New construction of this type may be even more iconic, making selected corners very unique places to emphasize the character of the Downtown District.

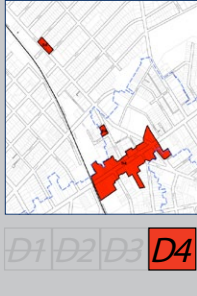
SECTION 135-38 | DOWNTOWN DISTRICTS

SC

(d) Character Examples
Photographs show general principles only and may not meet all standards



(e) Zone Application



PAGE 3-37

HADDONFIELD DOWNTOWN CODE

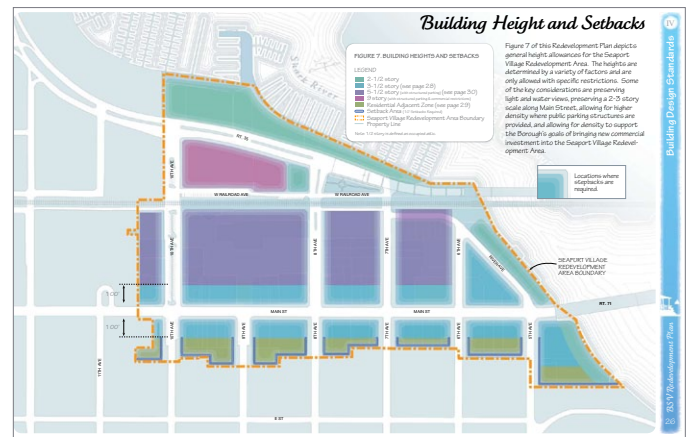
The Haddonfield downtown code is a preservation tool that seeks to inform and complement what could be accomplished through historic preservation review. The master plan amendment clearly announced that "in every district, the potential for new development would be no greater than that allowed by the current zoning, and in most cases it would be less" (emphasis added).

The planners took pain to troubleshoot and beta-test the code, by modeling and testing possible outcomes on a series of sensitive sites. The creation of smaller sub-districts makes it possible to create a more fine-grained and textured regulatory structure within the confines of a fairly conventional zoning framework.

As long as the new code provisions are not punitive to existing property owners — and perhaps even have something to offer, in terms of an expedited entitlement process or less stringent standards, such as parking — this approach poses a lower risk of a legal challenge.

Belmar

The 2007 Belmar Seaport Village Redevelopment Plan and Design Guide was prepared by NewWorks for a 70-acre area fronting on the Shark River, including a former car dealer. The project was a pilot for the LEED-ND program. The code distinguishes between four districts — town center, Main Street, Marina and Fisherman's Village — and contains detailed architectural requirements and a graduated building height plan ranging from 2 ½ to 9 stories within a relatively small footprint.



Newton - Hicks Avenue

The Hicks Avenue redevelopment plan was prepared by A. Nelessen Associates in 2009 for a former 12.5 acre industrial site in the City of Newton. The site was declared an "area in need of redevelopment" and the redevelopment plan was prepared to effectuate its redevelopment as a mixed use neighborhood center, with a combination of retail, office, townhouses, twins and single-family housing.

The plan contains a street regulating map identifying five street types — major arterial, arterial, street, boulevard and residential lane — along with street cross-sections, design standards and proposed alignments for new streets. In addition, the code also contains building regulations, a landscape plan and provisions governing parking and utilities. Some of the code provisions are provided through graphics, tables and diagrams, but much of it is in narrative form.

Hicks Avenue: Street Regulating Plan

DRAFT

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The proposed Thoroughfare Regulating Plan calls for a network of streets distributed through the Area. This network provides delineation of buildable blocks. Automobile traffic utilizing the mixed-use buildings at the intersection of Sparta Avenue and Hicks Avenue could be segregated from the residential uses within the Area. Traffic is distributed evenly across the remainder of the Area with stop signs proposed at all street intersections. The street network provides several points of entry, so that both pedestrians and drivers can utilize the most convenient routes through and into the Area. Blocks are varied and small, enhancing the pedestrian experience.

The Thoroughfare Plan exhibits a hierarchical interconnected network. The street typologies correspond with the function and form of each thoroughfare. The thoroughfare categories within the Area include: Major Arterials, Arterials, Boulevards, Streets and Residential Lanes. The street types within this Area deviate minimally from the standards set forth for thoroughfares in the Residential Site Improvement Standards (R.S.I.S.).

The thoroughfare labels refer to specific street designs included in the Thoroughfare Standards. The following labels are used for the thoroughfares:

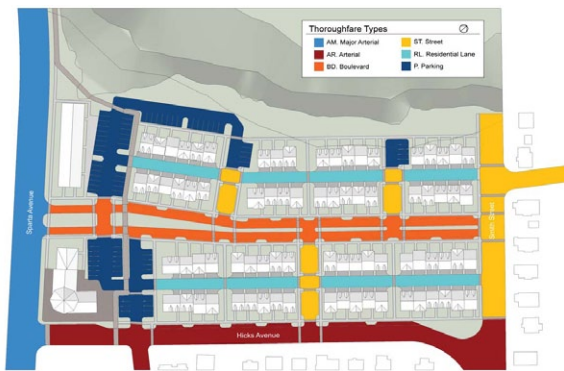
Boulevards - BD

Major Arterials - AM
Arterials - AR
Streets - ST
Residential Lanes - RL

The labels indicate the right-of-way width and cartway width. For example, ST4428 is a "Street" with a 44 foot right-of-way and a 28 foot cartway width from curb to curb. The various types of thoroughfares and their locations are indicated on the Thoroughfare Regulating Plan below.

The boulevard intersects with Sparta Avenue and Smith Street, however, traffic movement at its intersection with Sparta Avenue will be limited to right turn in - right turn out due to safety concerns. Streets intersect with the boulevard and Hicks Avenue, while the residential lanes intersect with the streets and Smith Street. One other access point to the Area is the point of ingress/egress to the mixed-use development fronting onto Sparta Avenue at the intersection of Prospect Street with Hicks Avenue. This access point must be treated as a street.

The landscaping layout and parking arrangements are indicated in the Thoroughfare Standards. The streetscape is discussed in the Landscape Section of this Redevelopment Plan.



Hicks Avenue Redevelopment Plan

Woodbury

The recently adopted Woodbury Downtown Redevelopment Plan and form-based code was prepared by Group Melvin Design. The plan and code apply to the 1.5 mile Broad Street corridor — Woodbury's downtown — which is planned to have two stations once passenger service from Glassboro to Camden is restored as a result of the planned southern extension of the PATCO line. The plan was prepared under the authority granted by New Jersey's redevelopment statute.

Of the codes reviewed here, the Woodbury code is perhaps the one with most affinities to the new urbanist models prevalent elsewhere in the country. It contains a street regulating plan and an extensive discussion of building types and defines public frontage types along with permitted and prohibited uses for each of three districts — downtown, live-work and neighborhood — which are presented as Transect Zones.

The regulating plan map codifies the location of the "Transect Zones" and "Frontage Types", which in turn determine the permitted building types and design regulations for any given parcel. Transect Zones and Frontage Types are deemed to be fixed.

The code indicates that the "three Transect Zones were planned and designed based upon their respective existing and desired road layout, utilities, densities and land uses so as to promote the vision of the Redevelopment Plan". The code anticipates changes to the City's street pattern, and these are identified in the street regulating plan. The street regulating plan codifies both street types and seven frontage types.

Street Regulating Plan

THE PLAN

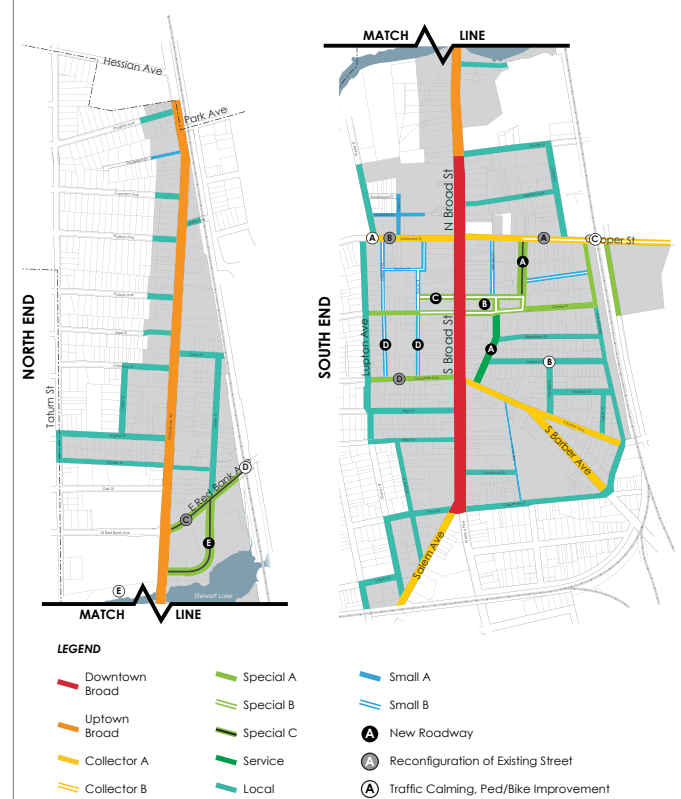


Figure 4.5: Street Regulating Plan Map

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Woodbury Downtown Business District Redevelopment Plan | 55

Conclusions

The limited applicability of form-based codes in New Jersey to date cannot be attributed solely to the State's and local governments' current fiscal woes, to the limited activity in the real estate markets or to lack of information or interest regarding these codes on the part of the planning community and local planning officials.

It is true that New Jersey is currently in a severe real estate market recession, where demand is dampened and credit is restricted. But so are California, Florida, Arizona, Nevada and many other states, where form-based codes flourished, certainly before the recession, and in some cases since then. Peoria, Illinois is not the most dynamic real estate market in the country, yet it recently adopted an award-winning form-based code for the "Heart of Peoria". Miami has certainly suffered from the recession, yet it too has just adopted Miami 21, another award-winning form-based code for the entire city.

The near build-out of the Washington Town Center — a large new urbanist community developed under an early form-based code, described above — provides New Jersey with a widely publicized and easily accessible local prototype, which can be studied and visited. Planners and local officials can go on study tours, "kick the tires", take detailed measurements and speak with residents and local officials.

Indeed, the overview of the New Jersey experience with these codes to date indicates that the planning community is interested and willing to experiment, and that at least some jurisdictions are willing to engage in these new types of code making. There has also been public funding available to pay for this work.

In the New Jersey case studies presented above we have not attempted to review every form-based code effort, and other experiences have taken place or are currently underway, in particular in some of the state's urban areas: Liberty Harbor North, the Bayfront Redevelopment Plan and the Jersey City University extension plan, all in Jersey City, are in the form-based code family. Other examples in Newark, Bloomfield and elsewhere have also been prepared and adopted under the state's redevelopment statute.

We believe the case studies reviewed above provide a good cross-section and reflect the state-of-the-art in New Jersey. The preponderance of hybrid codes suggests that the New Jersey towns and the planning practitioners engaged in this work are struggling with the question of how to best integrate form-based code elements into the state's land use planning and regulatory framework and into the existing local codes.

The fact that some codes that are clearly "form-based" do not call themselves "form-based", whereas others that are only marginally form-based call themselves form-based suggests either confusion or apprehension (or both) on the part of the planners.

Finally, it is undeniable that only those codes prepared under the redevelopment statute truly come close, in both form and content to the form-based codes seen elsewhere around the country.

VIII. Towards a Wider Application of Form-Based Zoning in New Jersey?

To definitively put to rest any apprehensions regarding the legality of form-based code applications in New Jersey, we believe a legislative solution is needed. New Jersey planning practitioners are struggling to find ways to accommodate form-based codes. California explicitly authorized form-based codes in June of 2004. New Jersey should do the same. No changes appear needed to the redevelopment statute for these purposes. But the MLUL should be amended to better accommodate and facilitate form-based codes.

[BOX - To definitively put to rest any apprehensions regarding the legality of form-based code applications in New Jersey, we believe a legislative solution is needed.]

This should not come as a surprise to anyone. While New Jersey's MLUL has been amended piece-meal dozens, perhaps hundreds of times since it was enacted in 1975 — to include important new concepts such as transfer of development rights (TDR), renewable energy sources and others, as well as legislative responses to case law — it has never been subject to a comprehensive re-examination and re-codification in all these years. Perhaps the time has come to do that.

Authorization: The best and most effective way to address the issue of form-based codes is to amend the MLUL to specifically authorize these types of activities. In our opinion this will require adding a definition for form-based codes, as well as definitions for form-based code related tools such as the regulating plan. The legislative amendment should also specifically authorize the concept of “coding” according to building types, streets, frontages and public spaces. It would also be helpful if these amendments provided greater clarity with respect to the authority to enact design controls over architectural design.

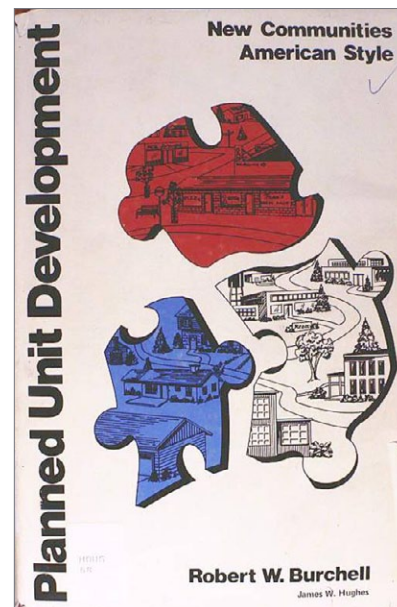
To prevent form-based codes from being used to create more precise recipes for sprawl — the type of land use patterns the state is trying to move away from — it would be advisable to add some caveats regarding the types of situations where form-based codes might be authorized. Municipalities seeking to use form-based codes to perpetuate exclusionary zoning practices and other activities frowned upon by the state should not be granted the ability to do so.

Planned Development Provisions: As previously discussed, the “planned development” and “general development plan” provisions offer the most flexible approach to land development regulation under the MLUL and are explicitly represented as such in the statute. These provisions provide for some level of flexibility not permissible in other conditions. Why did the Legislature decide to authorize flexibility under certain conditions and not others? Is there a case to be made that the legislative restrictions should be reviewed and updated based upon current conditions? We think the answer is affirmative, and that it would be advantageous to rethink and clarify those conditions under which the enabling legislation allows flexibility, and to align these with the state's smart growth policies and objectives.

The MLUL's “planned development” provisions were formally adopted in 1975. They appear to have been based upon the early work of Robert Burchell, one of New Jersey's distinguished scholars of urban and regional issues (*Planned Unit Development — New Communities American Style*, Center for Urban Policy Research,

Rutgers University, 1972). While “planned development” may have been the cutting edge in planning technology in the early 1970's, it should come as no surprise that it is significantly dated in 2010. New Jersey is also a very different place, 40 years later. Perhaps the Legislature should take a fresh look at these issues?

Planned Unit Development: New Communities American Style



“Planned Development” provisions were originally crafted for new developments on greenfield sites. By all accounts, they can be awkward to apply in projects with smaller footprints in places with a more consolidated pattern of development, and are not well suited to more complex redevelopment or infill projects with much higher densities on smaller parcels — precisely the types of projects that the state's smart growth policies seek to incentivize.

The MLUL's “planned development” language does not adequately reflect the state's current emphasis on compact, mixed-use development, center-based development, sustainable development or transit-oriented development. One option would be to amend the planned development provisions to explicitly reflect and legitimize the types of projects the state is trying to incentivize through fiscal and other means. To emphasize the change in direction, it might be useful to rebrand these provisions under a new label or labels.

The MLUL's current greenfield bias is reflected in the minimum area requirements: the planned unit development (PUD) requires a minimum of 10 acres (equivalent to 4 or 5 city blocks); the planned unit residential development (PURD) requires a minimum of 5 acres; and a General Development Plan (GDP) requires a minimum of 100 acres. In order to make these provisions more applicable to today's conditions, and to the state's smart growth policies, these minimum area thresholds for planned development should be dramatically reduced, or perhaps eliminated altogether.

General Development Plan Provisions: The GDP provisions were adopted more recently — in 1987, still a long time ago. They approximate one frequently adopted aspect of Form-Based Codes — the ability to allow for a certain amount of variation in implementation of an approved plan without having to go back to the approving authority. Form-Based Code regulations routinely allow for a variety of building types along specific street frontages, with

the final configuration subject — within pre-specified parameters — to market conditions. The GDP similarly allows for some level of variation without violating the terms of the original approval.

The GDP is a planning option made available to applicants by municipalities, but not available to municipalities wanting to be pro-active in terms of planning. If a municipality chooses to plan proactively for a specific area, a form-based code might be viewed as an equivalent mechanism.

Permit Streamlining: Form-based code regulations are much more precise and predictable than conventional zoning. Once adopted, form-based codes in other states are often implemented administratively, unless major deviations are requested. Site plans are still required, but they are not subject to public hearings as long as they substantially conform to the code. The permit streamlining aspect of form-based codes compensates for the more intensive upfront effort in terms of planning and public process prior to code adoption.

In a sense this is akin to the process New Jersey currently authorizes under the redevelopment statutes. Once a project is approved by the designated redevelopment agency, while it is still subject to site plan review by the municipal planning board, it is far less open-ended than most applications under the MLUL. If a redevelopment agency has competently fulfilled its obligations, the project should conform to the adopted redevelopment plan, while still subject to some level of tweaking in response to board and public input.

A similar system can be made to work in New Jersey with revisions to the MLUL. The MLUL should be amended to allow administrative review and approval of permits for conforming applications filed under an adopted form-based code.

The MLUL might also clarify that under a form-based code, a change from one permitted use to another permitted use — including signage, parking and all related issues — shall be treated administratively and not require site plan approval, provided it complies with the code. Some municipalities have already taken this approach under conventional zoning as a means of streamlining and expediting the review and approval process. At a time when economic development considerations are paramount, the removal of unnecessary barriers to investment at the local level would appear even more compelling and seemingly aligned with the current Administration's intentions as expressed in the report of the Red Tape Review Committee.

Time of Decision: One powerful impediment to more widespread application of form-based codes in New Jersey was recently eliminated when the Legislature passed, and Governor Christie signed the "time of decision" amendment to the MLUL. Local governments had been authorized to change zoning and land development regulations at any time, including in the middle of an application. This negated the predictability inherent to the form-based code process. With this crucial legislative amendment, the predictability and level of certainty required in order for all stakeholders to buy into the process has been restored. The law will go into effect in mid-2011.

Definitions: In addition to the recommendations referred to above, we believe that it would be advantageous for the MLUL to contain, or refer to, a more comprehensive set of definitions. At present, any term not defined in the MLUL is open to definition, by default, in local codes. This leads to endless and needless confusion.

Technical terms — such as the size of parking stalls — are defined in the specialized literature. It is hard to justify giving municipalities the authority to set these standards. The dimensions of motor vehicles do not vary from one jurisdiction to another.

While some jurisdictions may have a higher preponderance of one type of vehicle — say pick-up trucks or SUVs — over another, the size of the vehicle, and the corresponding parking stall size it requires, does not vary. The MLUL (or another state statute) should provide a set of uniform standards to address this. The definition should be sophisticated enough to distinguish between legitimate variations, while weeding out excessive engineering mandates.

Purposes - As previously mentioned, the MLUL could also contain more specific guidance with respect to the Purposes of local planning. The MLUL does not currently list among its objectives many purposes which are commonly accepted policies of the State of New Jersey and in some cases subject to their own regulatory spheres. Examples include the promotion of affordable and workforce housing, the advantages of achieving a reasonable balance between employment and housing, the advantages of locating public schools and other community facilities at the center of the communities served, the support of public transportation through local actions affecting land use or the support for pedestrian and bicycle forms of transportation. On the other hand, the MLUL does list as a purpose of local planning "to promote the free flow of traffic", a quaint remnant of a bygone era. The "purposes" section of the MLUL could be updated to reflect the changes in values and public policies which have taken place over the last 30 years.

What Do We Want and What Can We Expect From Form-Based Codes in NJ?

As discussed previously, form-based zoning is a tool that has the potential to provide all those involved in planning and development with a higher level of predictability and certainty. Carefully constructed and carefully implemented, form-based codes have the potential to give us better (re)development proposals — that work for both the (re)developer and the community — and that result in better places. While we have expressed some reservations, we also believe that greater adoption of these codes can lead to better physical outcomes, to more places we are proud of and to a better physical and natural environment overall because they encourage and facilitate a dialogue over design issues among planners, officials, stakeholders and the public which only rarely occurs when conventional codes are discussed. For these reasons, form-based codes can be instrumental in advancing the principles of smart growth and compact, mixed-use development espoused in New Jersey's State Development and Redevelopment Plan.

But this blue sky scenario is not necessarily assured. In fact, it could go wrong and end up subverted. It is vital for all involved to go into this new world with eyes wide open. The widespread adoption of form-based codes will not, by itself, ensure better prospects for smart growth projects, better place-making, greater sustainability or any of those objectives. Form-based codes are a tool, and like any tool, can be put to use for the wrong purposes.

Indeed, it is very important for all involved to recognize that form-based codes can just as easily be used to craft a more precise recipe for single-use, low-density sprawl as opposed to the mixed-use, transit-oriented, compact development we really want. While this has not historically been the case — form-based codes were, after all, developed to promote New Urbanist projects — good intentions can be subverted. At the end of the day, form-based zoning (like conventional zoning) is just a tool — and the ultimate objective towards which it is deployed makes all the difference. So it is critical to carefully weigh a number of considerations, and to be perfectly clear about the pros and cons involved.

With this in mind, we offer some recommendations to maximize both the positive potential for applications of form-based codes and to hedge against possible abuses of the enhanced author-

ity which would be provided to local governments if form-based codes were legislatively authorized and became widely accepted and endorsed.

Fully Understand the Tool: While the planners may get excited about the possibilities inherent in a form-based code, it is critical that local officials, their professional staff and the public also buy into it. This requires that all should be on the same page in terms of understanding the basic implications of adopting the new code provisions. Educating local officials, local planning and zoning staff and the affected stakeholders with respect to the fundamentals of a form-based code and the potential implications of its adoption should be an important pre-requisite before going down this path.

Public Process: New Jersey's MLUL requires only the bare minimum in terms of public input into code development. The statutory hearings held by the Planning Board and Governing Body do not constitute meaningful ways of engaging the public. While the MLUL does not preclude municipalities from sponsoring robust public participation processes that vastly exceed those minimum requirements — and some towns are deeply committed to engaging the public — cost factors (and perhaps other considerations) often drive towns to be satisfied with the bare minimum. This will not lead to codes that have ample buy-in from the key stakeholders and general public. It is difficult to argue in favor of granting administrative approvals if the code has been developed with only the most rudimentary level of public input. As such, it is recommended that a far more robust public engagement process, including visioning sessions, workshops and so forth, be made a pre-requisite to adopting a form-based code. The publicly-funded New Jersey codes reviewed earlier in this report required an enhanced level of public participation as a condition of the grants. While the public process will make the process more expensive, it will also significantly improve the final results.

Design Training: In order for local boards to fully capitalize on the potential created by increased responsibilities in terms of community design, it will be necessary to both elevate the role of design in local planning and to educate the board members.

It is widely acknowledged among the professional planning community that community design considerations are not generally a top priority for local planning boards and governing bodies. There are several reasons for this, including a lack of formal (and informal) training opportunities — most people serving in these positions have no formal training in design, and the opportunities to obtain it are very limited. (The mandatory training required by law emphasizes legal concerns over planning and design issues). While local officials often have strong personal commitments to improving local conditions and making the right decisions, community design considerations are often overshadowed by seemingly more tangible concerns, such as fiscal. Design considerations can be frustrating and seem superfluous or secondary.

This is compounded by the inconclusive nature of the MLUL with respect to the appropriate weight and level of priority which place-making and urban design considerations may be granted by local boards when reviewing (re)development applications.

The adoption of a Form-Based Code does not automatically guarantee the quality of the ultimate product. Poorly construed Form-Based Codes will lead to poorly-conceived outcomes. Greater control on the part of the municipality over the physical expression of (re)development only means that bad decisions by the municipality will more likely result in bad (re)development projects and lack-luster places. Form-based codes put the public sector designers in a much stronger bargaining position relative to the private sector designer.

In order to overcome these limitations, it is suggested that the legitimate role of community design in the MLUL be clarified as per the suggestions presented earlier, such that there are no ambiguities with respect to the level of authority local boards can exert over design issues; and that the mandatory training for board members be expanded to include community design (and perhaps additional training be provided, as well) for those communities wishing to engage in Form-Based Codes.

The need for appropriate design training is not limited to board members. Many professionals advising New Jersey boards are not architects, urban designers, or even planners, but rather engineers, as a result of New Jersey's outdated licensing law regarding professional planning (NJSA 45:14A-1). What to do? One option is to remove engineers and surveyors from this process, which would require amending the statute and its regulations (NJAC 13:41-1). Another option is to require an enhanced level of certification by everyone involved. The Form-Based Code Institute offers formal training in the technique. Other training options could be considered, including a New Jersey-centric training option, perhaps the most useful and relevant. Perhaps New Jersey should require some type of certification on the part of participating professionals as a pre-requisite to authorizing them to engage in this activity.

Finally, the administrative officers who will be directly responsible for administering the new codes will also need considerable training. The transition from a conventional code to a form-based code can be a gut-wrenching experience.

Architectural Style and Expression: Another important item has to do with clarifying the authority of form-based codes to regulate architectural style and expression, a huge flash point with the design professions. Form-based zoning is widely seen by many architects — accurately or not — as an uncalled for regulatory impediment on their ability to create new design expressions. This perception is confirmed by many of the adopted form-based codes nationally which indeed indicate a strong bias towards “traditional” architectural styles. This is a complicated and potentially contentious issue, because it is not often clear what dimensions a preference for “traditional architectural expressions” might take, or how this might be expressed in the architectural elements of a form-based code.

Master Plan Amendment: Zoning changes have a stronger legal standing if they are grounded in Master Plan recommendations. To this end, it is recommended that municipalities considering form-based code interventions first amend their Master Plans accordingly.

The Master Plan should indicate clearly the reasons for the zoning amendments as well as the rationale behind the areas targeted for these amendments. If certain areas are being considered for preferential treatment, it is important to clearly explain why this is good public policy.

The Master Plan should contain a detailed planning analysis of the area(s) in question describing the reasons why the current zoning provisions are no longer considered appropriate or sufficient. The planning analysis should provide the factual and empirical basis for the form-based code provisions. It should document all relevant information for the area, including lot sizes, building size and configurations, ways in which lots are occupied, relationship of buildings to streets and public spaces, location of parking areas, building typologies, building heights and so forth. The objective is to create a factual basis capable of justifying every dimension of the new regulatory framework. The planners should be able to justify the proposed form-based code not on the basis of vague and

generic planning principles, but rather on the basis of precedents drawn from either the area in question or from other areas which the town aspires to emulate.

The Master Plan amendment process should incorporate vigorous public outreach and opportunities for the public to engage in meaningful visioning. Public support for the alternative vision presented in the new form-based code will be critical not only in terms of helping to get it adopted but also in terms of future implementation.

Model the Code: Whether calibrating the SmartCode or developing a home-grown form-based code, it is critical that the potential implications of the new code be modeled and tested, prior to adoption. This is equivalent to beta-testing a product. With respect to form-based codes, it is recommended that a number of key sites be identified and modeled, to see what types of outcomes the code will lead to and test whether these outcomes are indeed the desired outcomes. Three-dimensional modeling — whether virtual or using an actual to scale built model — is recommended, to better allow the local officials and the public to visualize the outcomes. Beta-testing and calibrating the code can weed out unanticipated and undesired results and allow for corrective measures without the pressure and tension associated with a live development application.

IX. Monitoring and Evaluation

In this section we briefly discuss the need for performance evaluations both pre- and post-code adoption.

There is not much of a tradition in New Jersey of systematically monitoring and evaluating how a specific zoning code performs once it is implemented. Once adopted, zoning designations and provisions will often stay in place, without change, for many years. Municipalities are often wary of changing zoning provisions and are unlikely to act unless there is public support for change. Public support for change is triggered by a development proposal deemed controversial; by a visible trend also deemed controversial, such as demolitions of older houses and their replacement with much larger structures; by a substantial change in circumstances, such as the closure and relocation of a hospital or other specialized facility; or by public demand for a use or activity — such as senior housing — deemed in short supply in the community. In these cases, public officials may seek zoning changes to negate or mitigate the perceived negative outcomes, or to satisfy public demand. But absent these external motivations, it is unusual for boards to propose zoning modifications simply to improve the performance of the code, even though code reform could save the municipality administrative costs and save the applicants some or all of the time and expense involved with a formal application.

One indicator of how well a municipal zoning code is doing can be found in the number of variances requested by applicants in any given year. Zoning variances are usually listed in the Zoning Board's annual report, for those boards that comply with this provision of the MLUL. If a particular zoning district is generating repeated variance requests, year after year, that is usually a good indication that the municipality should look more closely at the reasons behind those requests for variances. For example there may exist discrepancies between the district bulk standards and the actual dimensions or configuration of the lots. If the bulk standards require minimum dimensions that are higher than the existing lot dimensions, those properties will automatically trigger the need for bulk variances. While it may surprise some, it is not unusual — especially in older communities — for a substantial portion of lots in certain districts to be non-conforming. In some cases, a majority of lots is non-conforming. One has to wonder what public policy objectives a municipality is pursuing in cases such as these. These deficiencies can be easily fixed, if there is political will to do so. If the zoning board takes a proactive role, it may call attention to this in the annual report and make recommendations to the Planning Board and Governing Board regarding possible remedies. Planning Boards also grant variances as part of site plan review but do not generally issue annual reports.

Information on variances requested and granted is not compiled in a central location, nor is it easily accessible. In many instances it is essentially lost. It is up to the zoning officer, planner, planning board chair or other involved individual to keep track and red flag these situations.

The coding usually undertaken as part of the form based code process, if correctly executed, should create a better fit between the code requirements and existing conditions and obviate the need for repeated variance requests. However, it is recommended that new codes contain a tracking system with respect to variances and waiver requests and require a periodic evaluation of how well the code is performing. This should be standard practice for any code, whether form-based or not.

The other measure of performance — public satisfaction with the built results of the code — is perhaps more subjective and not so easy to track. One way to tackle this would be to require

— as part of the mandatory 6-year Reexamination Report of the Municipal Master Plan — that the Planning Board conduct an assessment of how well the code is performing. This could be as simple as a public hearing dedicated to the subject. It could also include surveys of public opinion, focus groups or other similar social science research tools.

With the advent and increased popularity of quantitative tools — such as LEED-ND (LEED for Neighborhood Development) and the Star Index, to name only two — which measure the performance of buildings, neighborhoods and entire communities across a broad spectrum of planning-relevant variables, it would appear that in the future there will be far more opportunities to evaluate plans and the codes designed to implement them, on an objective basis prior to adoption. This will allow planners and the public to evaluate in objective ways, using widely accepted metrics, whether the plan and code can deliver the desired outcomes. A word of caution with respect to this is to recognize that these quantitative tools measure (or predict) performance, but are not appropriate to evaluate the quality of place making or the human experience.



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